DOCUMENT RESUME

ED 093 515 EC 007 969

TITLE	The Trading Post System on the Navajo Reservation. Staff Report to the Federal Trade Commission.
INSTITUTION	Federal Trade Commission, Los Angeles, Calif.
PUB DATE	Jun 73
NOTE	78p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock No. 1800-00158; $0.85)
EDRS PRICE	MF-$0.75 HC-$4.20 PLUS POSTAGE
DESCRIPTORS	*American Indians; *Consumer Economics; Credit (Finance); *Economically Disadvantaged; Food Stores; History; *Investigations; Life Style; *Merchants; Reservations (Indian); Rural Areas; Socioeconomic Status
IDENTIFIERS	*Navajos

ABSTRACT

Since the late 19th century, trading posts have been a prominant feature in Navajo economic life. Today, due to geographic isolation and an absence of economic alternatives, many Navajos are still dependent upon trading posts. This report of a Federal Trade Commission (FTC) investigation details the system on the Navajo Reservation, including the abusive and unfair practices used by many of the traders. FTC interest in trader conduct traces to a 1971 meeting between attorneys from the FTC Los Angeles Regional Office and staff attorneys from Dinebeiina Nahiilna Be Agaditahe (DNA), an Office of Economic Opportunity legal aid facility on the Reservation. The DNA attorneys cited 3 questionable practices: withholding government checks; alleged price fixing; and Truth in Lending Act violations, particularly in pawn transactions. In April 1972 the Commissioner of the Bureau of Indian Affairs (BIA) requested that the FTC, because of their expertise, conduct immediate investigations to promulgate revised Navajo trader regulations. FTC staff surveyed 95% of the trading posts on or near the Reservation. These interviews were directed at pawn practices, open end credit, and mail delivery. The staff also interviewed more than 100 Navajo consumers on the reservation. Public hearings were then held by the BIA and FTC in August 1972. The hearings concluded that one of the most onerous trader practices was "credit saturation" (extending credit up to the customer's known periodic income). (KM)

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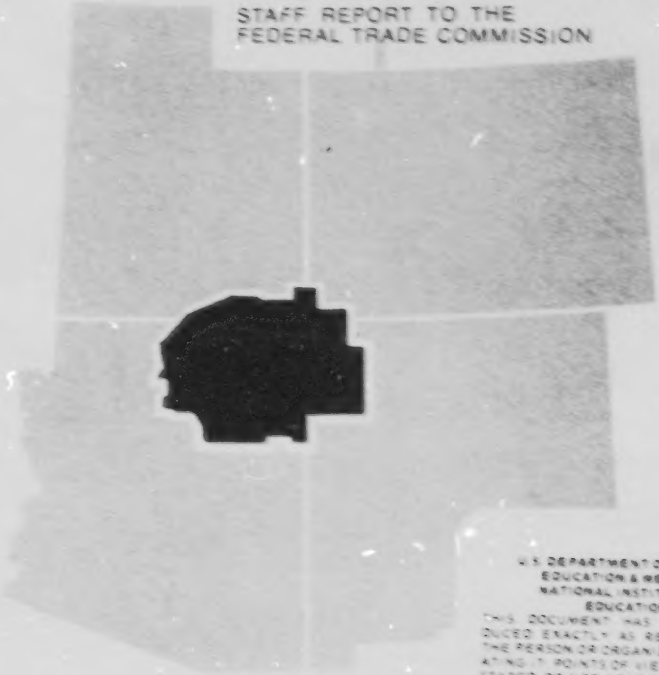
THE TRADING POST SYSTEM on the NAVAJO RESERVATION

STAFF REPORT TO THE
FEDERAL TRADE COMMISSION



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PREFACE

This report is the work of the staff of the Los Angeles Regional Office. Many of the observations contained in the report are based on the transcript of the public hearings conducted on the Navajo Reservation, August 28 through September 1, 1972. Other observations are based on the voluminous Commission investigational files (interview reports, pricing surveys, etc.) compiled during the course of the investigation. No citations to these investigational files have been made.

It should be understood that the analyses, interpretations, and conclusions expressed in this report are solely those of the staff responsible for its preparation.

TABLE OF CONTENTS

Prologue vii

Chapter

I. Introduction 1

II. Summary 3

III. The Trading Post System 5
History 5
The Early Period 5
The American Period 5
The Historical Role of Credit 8
The Modern Trading Post 9
Legal Status of the Trading Post 10
Multiple Roles of the Trader 11
Geographical Monopoly 12
Credit 12

IV. Abusive Trading Practices 15
Introduction 15
The Abusive Practices 16
Prices 16
Credit Saturation 18
a. Check Handling 19
b. Due Bills 21
Pawn 22
Sanitation and Quality 26
Weights and Measures 27
Purchase of Indian Products 27
Employment 28
Attitude 29

V. Off-Reservation Problems 31
Introduction 31
Abusive Trade Practices 31

VI. Responsibility 35
Introduction 35

Bureau of Indian Affairs 35
History 35
Enforcement of Regulations 35
The Navajo Tribe 37
State Action 37

VII. Recommendations 39
Introduction 39
Proposed BIA Regulations 39
Introduction 39
Revision of Existing Regulations 39
Proposed Additional Regulations 51
Enforcement of Revised and Proposed Regulations 53
Consumer Education 55
Alternatives to the Trading Post 58
The Co-op 58
The Window Rock Fedmart 59

Appendices 63
History of the Navajo People 63
Tribal Hierarchy 77

PROLOGUE

"We have seen hearings and investigations of this type dealing with the so-called 'Indian problems,' but in every case, the results amount to too little, too late.

"Several weeks ago when I learned of the Federal Trade Commission investigation of the trading posts system, I was skeptical. First, I wondered what can be the meaning of another investigation when the abuses are so flagrant—and have been carried on so long, that people would have to be blind to be unaware of them. Second, I have never understood why those who complain of the traders' exploitation must always bear the burden of proof. The traders are guests of the Navajo people on this reservation. They are given the privilege of doing business here by the Navajo Tribe, and they are given a legal monopoly by the BIA. In any other jurisdiction in the country, the privileged monopolists would have to come before the government regularly to show they deserve to retain their status—to show that their service to the public justified their continuing of business. Yet here, the presumption is that the traders are free to exploit until Southwestern Indian Development, DNA, or someone else can amass an overwhelming case against them.

"I think that there is a reason for this. Those with economic power are always free to take advantage of those without it, until they generate so much resistance that pressures for change are created. Poor people in the cities riot when they are pushed too far, and then the government does something about the problems. But this country knows, and the Commission knows, that Indian people are often rural, easy-going, uneducated, trusting, and politically unsophisticated. And we are the last to receive protection from those who push the little guy around. This will not always be the case. My daughters and their friends will be much better prepared to deal with a troublesome world than my parents were. But in the meantime, we must hope that a government inquiry, is for once, motivated by sincere concern.

"I will know that I was mistaken in my skepticism, if within six months, this investigation has produced some tough regulations and a way to be sure that they are enforced. This would be a new role for the BIA. In 1947, the Navajo Tribal Council knew that the traders

presented a major problem, and they acted on that knowledge. A carefully drafted regulatory resolution was passed, but the BIA refused to approve it, saying "That's our business." A quarter of a century has passed, and they still haven't done the job. Now we hope that they will, and that they will also allow the Tribe latitude to legislate against abuses as they become known."

Testimony of Peterson Zah, Deputy Director,
Dinebeiina Nahiilna Be Agaditahe (DNA),
Window Rock, Arizona—August 28, 1972

INTRODUCTION

The Navajo reservation is the largest Indian reservation in the United States. It comprises 15,000,000 acres located primarily in Arizona and New Mexico. Most of the terrain is barren desert, unsuitable for any productive use. Approximately 135,000 Navajos reside on these lands. The overwhelming majority subsist in poverty and squalor. Their lives are marked by chronic unemployment, illiteracy and disease.[1]

Since the late 19th century, trading posts have been a prominent feature of Navajo economic life. These facilities offered a broad range of foodstuffs and manufactured articles not otherwise available to their Navajo customers. Today, due to geographic isolation and an absence of economic alternatives, many Navajos remain dependent upon local trading posts for essential purchases.

Many traders engage in a variety of abusive and unfair trade practices. This report details the trading post system on the Navajo reservation.

Federal Trade Commission staff interest in trader conduct traces to a 1971 meeting between attorneys from the FTC Los Angeles Regional Office and staff attorneys from Dinebeiina Nahiilna Be Agaditahe ("DNA"), an OEO legal aid facility operating exclusively on the Navajo reservation. The DNA attorneys cited three questionable practices: withholding welfare and other government checks; alleged trading post price fixing; and Truth in Lending Act violations, particularly as they relate to pawn transactions.

The Bureau of Indian Affairs ("BIA") has primary responsibility for regulating trading practices on Indian reservations. In April 1972 Louis R. Bruce was BIA Commissioner. Recognizing trader misconduct toward Navajo consumers and conceding that appropriate regulation

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[1] "Economically speaking, the Navajo constitute an underdeveloped group. They are an underdeveloped internal U.S. colony. They show the marks of it. Their poverty and their undereducation are not causes of their underdevelopment but results of it. The underdevelopment results from their relations with the larger society, which limit the economic options open to them, drain off their resources, and fail to provide them with the education, the technological base, and the organizational forms necessary for satisfactory development." David Aberle, *A Plan for Navajo Economic Development*, p. 228.

by BIA ". . . has been both inconsistent and ineffective," Mr. Bruce requested that the Federal Trade Commission, because of its expertise, immediately conduct an extensive investigation on the Navajo reservation to obtain information upon which to promulgate revised Navajo trader regulations.[2] By resolutions dated May 1, 1972 and May 31, 1972, the Federal Trade Commission approved public and closed investigational hearings in this matter.

In the course of the investigation, the Los Angeles Regional Office staff surveyed 142 trading posts on or near the Navajo reservation—representing approximately 95 percent of all such posts—to determine conformity with existing BIA regulations. These trader interviews were directed at the areas of pawn, open end credit and mail delivery. Pricing surveys at stores in communities rimming the reservation were also conducted to form a basis for comparison.

Upon completion of the trading post survey, the staff interviewed more than 100 Navajo consumers across the reservation. These consumer interviews more clearly defined areas of trader practices and noncompliance with existing regulations.

BIA personnel, tribal officials and local law enforcement officials were also interviewed. They were requested to present their views concerning trader practices and possible noncompliance with existing regulations. The views of individual traders and the trader association were also solicited.

Public hearings were conducted by BIA and FTC personnel. They commenced on August 28, 1972, in Window Rock, Arizona, capital of the Navajo Nation. During the first two days of the hearings in Window Rock, 22 witnesses testified. These witnesses included tribal officials, BIA officials, state enforcement officials, traders, an attorney representing the United Indian Traders Association, Navajo consumers, and experts in the fields of economics and anthropology.

To take further Navajo consumer testimony, hearings were also conducted in Shiprock and Crownpoint, New Mexico, and in Chinle, Pinon, Kayenta and Tuba City, Arizona. These six communities were selected because of their geographic proximity to the major population centers on the reservation. The hearings in the outlying communities continued for three days; two hearings were conducted simultaneously each day. Testimony from 62 Navajo consumers was taken.

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[2] Letter from Commissioner Louis R. Bruce to Miles W. Kirkpatrick, dated April 7, 1972.

SUMMARY

The trading post system on the Navajo reservation is a unique institution. Its operation has the hallmarks of a 19th century general store. It offers a comprehensive line of essential food items and manufactured articles. It purchases raw wool and sheep. The trading post is a highly lucrative enterprise. Reservation trading posts annually gross in excess of $20 million. Individual posts range in annual sales volume from $100,000 to more than $500,000.

The trading post enjoys an unusual monopoly on the Navajo reservation. Many Navajos live in geographic isolation, spread across the vast terrain of their lands. The local trading post is often the only accessible facility where they can procure necessary items. Patronizing another post is geographically impractical.

Dependence on the local trading post is also encouraged by an absence of economic alternatives to Navajo consumers. The Navajo reservation is characterized by poverty and chronic unemployment. Industrial development is minimal. Many Navajos are compelled to shop at local trading facilities by an absence of competing enterprises. Although some Navajos with access to transportation can patronize discount stores in larger population centers, the trading post remains the only alternative for the old, the geographically isolated, and those without transportation.

Navajo dependence on trading facilities is maintained through a variety of formidable and abusive trade practices. One of the most onerous practices is "credit saturation." This term refers to a practice whereby the trader extends credit up to his customer's known periodic income. Credit saturation is accomplished through a variety of devices. These include withholding welfare and other government checks; compelling the Navajo consumer to endorse his check to the trader; refusing to negotiate Navajo checks for cash; diverting checks to the trading post; and employment of "due bills" and "trade slips."

The trading post is central to the economic life of the Navajo community. Accordingly, some traders fulfill a variety of roles which transcend their function as conventional merchants. The trader is particularly important to Navajo livelihood in his capacity as pawnbroker, employment agent, and purchaser of Navajo products and

handicrafts. Questionable conduct accompanies many trader pawn transactions.

Other offensive trader practices include the quality of products offered; sanitary conditions; weights and measures employed in sales transactions; and trader discourtesies toward Navajo customers.

The above trader practices also attend trader transactions occurring at off-reservation trading facilities.

To appreciate the setting in which the trader thrives, we have included historical, sociological, anthropological and economic material describing the Navajo people, their culture and economy.

Chapter III

THE TRADING POST SYSTEM

HISTORY

The Early Period

Sophisticated trading systems characterized traditional Navajo economic life.[1] Most authorities agree that intensive trade with neighboring tribes was a prominent feature of the pre-Columbian economy.[2] Impressive commercial intercourse occurred between Navajos and most of the Rio Grande Pueblos; trade was later established with members of the Southern Ute, Hopi, Yuma and Apache tribes.[3]

Although the exact dating of Navajo-Spanish trade cannot be fixed, formal trade relations are recorded by the end of the 17th century.[4] The Spanish colonial government energetically attempted to encourage Navajo trade. Illustrating this policy was a Spanish proscription on Navajo tobacco cultivation to compel the tribe to purchase its requirements from Spanish merchants.[5] Also indicative of Spanish expansion over Navajo commercial activity was an edict by Governor Diego de Penalosa prohibiting the tribe from engaging in trade with neighboring Pueblos.[6]

The American Period

Navajo contact with American traders commenced long before the American conquest of New Mexico (1846)[7]. These initial encounters, however, were erratic, occurring only when the Americans were

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[1] John Upton Terrell, *The Navajo*, p. 16.

[2] William Y. Adams, *Shonto: A Study of the Role of the Trader in a Modern Navajo Community*, p. 149.

[3] W. W. Hill, "Navajo Trading and Trading Ritual," *Southwestern Journal of Anthropology*, vol. 4, pp. 371-396.

[4] Alfred B. Thomas, *Forgotten Frontiers: A Study of the Spanish-Indian Policy of Don Juan Bautista de Anza, Governor of New Mexico, 1777-87*, p. 374.

[5] Richard Van Valkenburgh and John C. McPhee, *A Short History of the Navajo People*, p. 7.

[6] Terrell, p. 3. The Navajos would therefore be compelled to engage in trade with the Spanish on an exclusive basis.

successful in defying Spanish regulations interdicting Indian trade with alien nations.[7] It was not until the middle of the 19th century that systematic trade was established with an American settlement.[8] The first American participants in this formalized trade were members of Mormon colonies, located north and west of the Colorado River.[9]

Prior to the Bosque Redondo exile of 1864,[10] the Navajos were never economically dependent upon commercial trade. A flourishing agricultural and pastoral economy precluded the need for "functional interdependence at the subsistence level."[11] Consequently, the main articles traded by Navajos were considered luxury items.[12]

The pattern of Navajo trade was critically altered by the Bosque Redondo exile and its accompanying ten-year treaty. During the ensuing period of economic destitution, most Navajos were compelled to depend upon United States Army rations for meager subsistence. This initial reliance for food eventually generated into a total dependence upon goods of foreign manufacture. It was from these modest origins that the tribe coalesced into a stable and dependent market which could be commercially exploited by enterprising persons.[13]

It is impossible to date the establishment of the first permanent trading facility. Documentary evidence indicates that a white man was trading with Navajo residents as early as 1849.[14] Despite the presence of occasional itinerant traders, an established reservation trading post system did not develop until 1870.[15] This institution traces to two distinct historical sources. Commencing at Fort Reliance, eastern trading posts developed as a natural consequence of the army rationing system. Army "sutlers"[16] would encourage Navajos to bring in surplus wool to trade for additional rations. When commerce became

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[7] Adams, p. 149; Terrell, p. 81.

[8] Adams, p. 149.

[9] Evidence indicates that this was promoted by the westward expansion of Navajos with the Carson expeditions of 1862-1863. See Adams, pp. 37-39.

[10] For a historical discussion of this period see p. 127.

[11] Adams, p. 30.

[12] However, there is support for the theory that food was a main item of trade with the Hopi, especially during periods of famine. See Walker Dyk, *Son of Old Man Hat*, pp. 49-53.

[13] Adams, p. 130.

[14] Van Valkenburgh and McPhee, p. 44.

[15] Adams, p. 130.

[16] These were persons who sold provisions to the Army.

brisk, they quit government service to devote their full energies to the emerging Navajo trade.[17]

Trading posts in the western part of the reservation evolved from early cordial Navajo-Mormon commercial relations. Although trade was initially sporadic, Mormon colonization southward from Utah assured the establishment of permanent trading facilities.[18]

According to one authority,[19] the building of the transcontinental railroad solidified the position of the trading post as a permanent fixture on the Navajo reservation. Of profound importance, the railroad guaranteed a steady current of manufactured products, while providing access to Eastern markets for Navajo wool and blankets. Consequently, a thriving wholesale mercantile business emerged, specializing in trading post supply.

In 1876, five trading posts were engaged in business on and around the Navajo reservation.[20] By 1890—six years after commencement of railroad service—the number had increased to forty firms.[21] Many of these first facilities were unstable, transient enterprises, characterized by frequent changes in proprietary ownership. Despite formidable capital risks, however, Navajo trading offered impressive, immediate profits from a virginal consumer market.

Blankets, hides and pelts were the foundation of early Navajo trade. Substantial quantities of raw wool soon displaced these commodities as the main basis of exchange.[22] In 1890, the traders began an ambitious program to develop a market for Navajo weaving. To satisfy a demanding Eastern clientele, alien methods, designs and dyes were thrust upon native weavers. The product—a brilliantly colored rug, evocative of oriental designs—generated immense profits for enterprising traders.[23] With World War I, this market climaxed, resulting in the substitution of raw wool as the basic barter commodity and the increasing prominence of credit in Navajo economic life.[24]

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[17] Ruth Underhill, *The Navajos*, p. 181. Between 1868 and 1871, facilities were opened at Fort Defiance, Keams Canyon, Ganado and at Fort Wingate. Their proprietors were formerly affiliated with the United States Army. Van Valkenburgh and McPhee, pp. 44-45.

[18] Adams, p. 151. Mormon facilities were established at Tuba City and at Bluff City. Dyk, p. 20. A majority of modern traders are descended either from Mormon settlers or from Army personnel.

[19] Underhill, pp. 178-179.

[20] Irwin T. Sanders, et al. *Societies Around the World*, vol. 1, p. 232.

[21] Underhill, p. 182.

[22] Adams, p. 152. In 1886, one million pounds were purchased; in 1890, this figure had increased to two million pounds. Underhill, p. 181.

[23] Underhill, pp. 185-190.

[24] Adams, p. 153.

THE HISTORICAL ROLE OF CREDIT

With the decline of the market for Navajo weaving after World War I, the basis of the trading post economy shifted to seasonal lamb and wool production, resulting in a heavy dependence by both consumer and trader on long-term credit.[17] The wool and lamb sales were conducted on six-month cycles. Between these sales the trader extended credit to his Navajo customers to purchase essentials at the trading post. When the wool or lambs were ready for market, the Navajos would sell them to the trading post and discharge their loans with the funds received.

The trader was also compelled to adhere to a six-month credit cycle with his supplier. Most trading posts did not have adequate funds to extend credit to their customers for six months. Consequently, wholesalers located in nearby towns had primary responsibility for financing this credit system.[18]

After 1940, reservation income derived from farming and stock raising declined from 58 percent of total income to its 1970 level of 7 percent.[27] Aided by the mobility of improved transportation, stock raisers have become more sophisticated in shopping for better prices for their wool or lambs and are no longer restricted to the nearby trading post. Consequently, the economic foundation of the trading post system has again shifted and is now bottomed on monthly social security, retirement and welfare checks. Most trading post credit accounts now operate on a thirty or fifteen day turnover. The posts are no longer compelled to rely on long-term credit. It is also general practice for wholesale grocery suppliers to operate on a cash basis with thirty day billing and no interest charged for accounts paid within that period.[28] Although the wholesalers continue to "stand on the same relationship to the trader as the latter in turn stands to the Navajo consumer," it appears that the processes noted in 1957 that were "lessening the store's historic dependence on long-term wholesale credit"[29] are well advanced.

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[17] Adams, pp. 155, 168.

[18] *Ibid.*

[27] Terrell, p. 297.

[28] Various observations herein, such as this one, are supported by specific and general information obtained during the non-public phase of the investigation. No citations to Commission investigational files are made.

[29] Adams, p. 168.

THE MODERN TRADING POST

Although the trading post has the colorful attributes of a unique frontier institution, it is, above all, a retail establishment operated by a merchant, the trader, who is attempting to earn a living. Indeed, from the wholesaler's perspective, the trading post is simply a small volume store which carries groceries, hardware goods and clothes. It differs from other retail establishments in that it carries all of the items one would expect a 19th century economy to consume. This mix of goods reflects the material culture of the Navajo consumers.[30]

The selection of goods offered by the trading post is reminiscent of a 19th century general store; the physical plant may literally *be* that of a 19th century general store. Most trading posts were erected over 50 years ago.[31] One Navajo recounted:

> The Tuba City Store Trading Post has been established back in 1870. It's been 103 years since that store has been established. Since then no improvements have been made by [the owners]. When you want to get something that you want from the store you have to wait for at least half a day before you get your turn on the counter. They got the counter right around the store and we can't get to what we want.[32]

The store interior normally consists of a single, large room with a rectangular central area of open floor space—the "bull pen"—enclosed on three sides by counters and showcases. Walls lined with stock shelves from floor to ceiling parallel the counters.[33] Larger hardware and harness equipment hang from nails in the ceiling. Adjoining the sales area are located a small warehouse, a vault for storing pawned items, and the living quarters for the trader and his family.[34] Trading posts that still buy wool and livestock will also have the appropriate corrals, scales and other essential items near the main store building.

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[30] The contemporary Navajo consumer is similar to his white American counterpart of 50-100 years ago. Adams, p. 263.

[31] See, *e.g.*, Adams, p. 161.

[32] Transcript [hereinafter Tr.], p. 965. Page references are to transcript of public hearings conducted on the Navajo reservation, "Unnamed Traders on the Navajo Reservation," File No. 722-3327, August 28 through September 1, 1972.

[33] The counters are unusually high to make it impossible for Navajo customers to reach shelves from the bull pen area. There is some indication that they were originally built high for protection purposes. See Frank McNitt, *The Indian Traders*, pp. 73-74. In posts employing this traditional layout, prices are either unmarked on items, or marked only on shelves.

[34] Adams, p. 162. These rooms are located in the same structure as the sales area.

The Navajo who patronizes one of these traditional trading posts must wait until the trader or a clerk behind the counter is available to fetch the goods that the customer wishes to purchase.

Although most posts retain this interior design, there is an increasing trend toward the use of shelves arranged in aisles for self-service.[33] This trend is especially evident where competition is beginning to be experienced.

The full staff of a Navajo trading post typically consists of the owners or resident managers—normally a husband and wife—and one or more Navajo clerks. Before World War II, most owners resided and worked at their trading facilities. However, the post war years have witnessed a direction toward multiple and absentee ownership, and a concomitant employment of resident managers.[34]

The owners and managers are, in the vast majority of trading facilities, whites who speak just enough Navajo to conduct business with their customers. A surprisingly large percentage of these managers and owners are members of a few large families who trace their presence on the reservation to ancestors who were early American settlers in the area.[35]

LEGAL STATUS OF THE TRADING POST

The term "ownership" as applied to the trading post must be qualified. Trading posts are generally erected on reservation land. Trade with the Indian tribes has historically been accorded special treatment.[36] Title 25, United States Code, Sec. 261 specifies that:

> The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and make such rules and regulations as he may deem just and proper. . . .[37]

The Commissioner has invoked this authority to issue rules and regulations which specifically cover traders on the Navajo reservation. These regulations are promulgated in 25 C.F.R. Secs. 252.1 *et seq.* They require that traders be licensed by the Commissioner of Indian

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[33] This direction is noted especially among those posts adjoining well-traveled paved roads. Cf. Mariano Lake Trading Post near the end of a paved road, with neighboring Pinedale Trading Post, located 8.4 miles away on a dirt road.

[34] See, e.g., Adams, p. 133; McNitt, p. 266.

[35] Adams, p. 131.

[36] U. S. Const. art I, Sec. 9, cl. 3.

[37] 25 U.S.C. Sec. 261.

Affairs and they prohibit certain practices which may be injurious to the Indians.[40]

To operate a trading post on reservation land, the trader must obtain a lease from the Navajo Tribe as lessor. He must comply with certain provisions dictated by the Tribe. Although a few traders operate on privately owned reservation land—land that was privately owned before the reservation was established in 1868—the vast majority of traders must attain the status of Tribal lessees. Legal title remains vested in the United States for the benefit of the Navajo Tribe.[41] Leases run for a maximum of 25 years[42] and may be terminated for breech of any of its terms, or for "violation of any law of the United States or regulations of the Secretary of the Interior or Commissioner of Indian Affairs, or lawful Navajo Tribal resolution applicable to the operation of any Indian trading business."[43]

In substance, operation of a trading post is, in theory, a privilege that is carefully regulated and easily lost. This theory has never achieved the status of reality.

MULTIPLE ROLES OF THE TRADER

Operation of a trading post has traditionally involved more than just selling goods. Historically, the trading post represented the only daily contact that Navajos had with white society. As such, all business that might be transacted with white society was channeled through the trading post, personified by the trader himself. The trader was not only the sole source of white society's goods; he was also the post office, interpreter, scribe, banker, creditor, newscaster, employment agent, railroad claims agent, ambulance driver, and furnished the community social center.

Today, the roles that the trader regularly plays have decreased. For some Navajo patrons, he remains their only contact with white society. However, the number of English-speaking Navajos and the availability of alternative transportation sources have greatly increased. The trader is consequently no longer the only person who can provide the various services that might involve contact with the outside world. The trader's sphere of influence has, in part, been limited to those services that relate to his role as merchant.

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[40] These practices are covered in detail *infra*.
[41] 5 Navajo Tribal Code [hereinafter NTC] Sec. 768.
[42] 5 NTC Sec. 762.
[43] 5 NTC Sec. 770.

There are, however, exceptions to this decreasing pattern of dependence. Of immense importance is the trader's role as postmaster. In those areas where population is scattered, the trading post may physically be the only logical, central place to offer postal services. In communities where separate postal facilities have been established, the trader still acts as mail depository for many of his customers. Abuses relating to this aspect of trading post operation are among the most offensive discovered by this investigation and are discussed at length below.

GEOGRAPHICAL MONOPOLY

The Navajo reservation encompasses approximately 25,000 square miles, an area roughly the size of West Virginia.[40] This territory supports 135,000 persons. (In 1970 the population of West Virginia was 1.74 million.) There are only 1,370 miles of paved roads.[41] The Navajos were traditionally a nomadic people and were not concentrated into communities. That pattern is still evident; many people persist in living miles from the nearest road. Confronted by low population density in most areas, it is not economically feasible for trading posts to be located in close proximity to one another; the volume of business would not be adequate to support each facility.

Consequently, most trading posts do not compete with nearby facilities. These posts enjoy a "geographical monopoly." An extreme case is that of Navajo Mountain Trading Post. This facility is over 32 miles from its nearest competitor, Inscription House, reached by a dirt road that is often impassable. Inscription House is, in turn, over 120 miles from Flagstaff, Arizona, the closest town which has conventional supermarkets.

CREDIT

One aspect of the trading post operation requires special emphasis. This is the extent to which Navajo purchases from the trading post are effected on credit. In the typical trading post, credit sales account for up to 90 percent of the gross sales.

Today, most trading post patrons receive monthly or bi-monthly

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[40] The Navajo Tribe, *The Navajo Ten Year Plan*, p. 9.

[41] *Id.* at 21.

payroll or welfare checks. The bulk of trading post credit is based on this regular periodic income. During the month the Navajo will purchase goods on his "open account." When his check arrives, he will endorse it to the trading post to discharge his accumulated bill. The trader will generally set a "credit limit" for the customer at the amount of his regular check so that the customer can discharge his entire bill at the end of the month. Unfortunately, this system results in what is commonly referred to as "credit saturation." The Navajo virtually never has any cash left over from his check and is compelled to continue to buy on credit at the trading post where he has an account. Since a trading post will generally extend credit only if it is assured of gaining control over the Navajo's check, the customer can establish an account at only one trading facility. The Navajo therefore finds himself tied to one trading post for all his essential needs. The trader, on the other hand, has strengthened his monopolistic position. If his geographical monopoly is being eroded by improved roads and transportation, he still can invoke credit saturation to eliminate or reduce competition. The problems related to credit saturation have been found to be particularly severe and are discussed in detail below.

While the majority of extended credit rests on checks, a secondary source exists in the form of pawn. One of the few liquid assets—indeed, one of the only material possessions that the Navajos possess—is their famous turquoise and silver jewelry. Traders regularly extend credit to Navajos who pledge their jewelry as security. Again, abuses related to pawn transactions have been found to be frequent and unconscionable. These cited abuses are detailed below.

Chapter IV

ABUSIVE TRADING PRACTICES

INTRODUCTION

The practices of the trading post system involve more than a conventional merchant-patron relationship. The trader exerts a profound psychological and social influence over his Navajo customers that transcends his economic importance. The traditional Navajo livestock economy has largely been replaced by wage and retirement income, and welfare payments from state, federal and tribal governments. To the unsophisticated Navajo consumer, the trader represents dominant white society. He offers the hallmarks of an industrial economy; he understands how this economy functions. In contrast, many Navajos do not even know how to read numbers.

The anachronistic trading post continues to exert significant influence on the Navajo reservation. The trader engages in abusive practices, detailed below, which in turn permit him to maintain his monopoly. Major responsibility for securing this monopoly must be assigned to three sources.

First, the trader's monopoly rests upon ignorance and poverty. Many Navajos are illiterate; most are unsophisticated in commercial transactions. A debilitating cycle of Navajo destitution and naivete permits the trading post to attain monopolistic stature. The monopoly is then perpetuated by exploiting the Navajos' indigence and privations.

Second, the trader maintains his monopoly through the geographic isolation of Navajo residents.[1] The reservation is characterized by great distances between communities and by the lack of transportation facilities.[2] The trading post is, for the many Navajos without access to transportation, the only source for all necessary goods and services. The trader is presented with a secure, stable population who must patronize his facility.

This disadvantaged segment of Navajos with no access to other

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[1] There are only 60 miles of roads per 1000 square miles on the Navajo reservation. *The Navajo Ten Year Plan*, p. 1.

[2] Because of the mobility they provide and the number of uses to which they can be adapted, i.e. hauling water, wood, livestock, etc., pickup trucks are the most sought after consumer items by Navajos.

markets is not the only class injured by the noncompetitive nature of the trading post system. Dissatisfaction with the trading post system on the reservation is reflected by the fact that Navajos with transportation will travel great distances—frequently in excess of 100 miles—to shop at off reservation grocery stores.[3] Despite the mobility of some Navajos, however, great distances create a dependence on the local trader for day-to-day purchases.[4] To this mobile segment of the Navajo population, the trading post serves as a convenience store, an evil which is tolerated because it can usually be avoided.

Third, the most formidable method by which the trader attains a monopoly over the Navajo consumer community is through credit saturation. This term refers to a practice whereby the trader extends credit up to his customer's known periodic income. By being constantly indebted to the trading post, the Navajo consumer exists in a state of economic indenture. The practice is perpetuated by requiring the Navajo to have periodic income checks delivered to the trader. They are then routinely negotiated and applied to those credit purchases made after negotiation of the last check. The Navajo is therefore tied to the trading post in a treadmill of payments and future extensions of credit.

The Navajo trader recognizes that his future prosperity is contingent upon reducing alternative markets available to his patrons. Various unfair, abusive and deceptive practices are employed to preserve the trader monopoly and to maintain the economic captivity of these people. These practices concern virtually every facet of the trading post operation.

Many traders are honest and conscientious businessmen who contribute to the welfare of their communities. Even some of these traders, however, engage in questionable practices which impede economic alternatives to the Navajo consumer. More serious is the unscrupulous minority of traders who engage in all, or almost all, of the practices cited in this report. Each of the practices discussed herein has been the subject of numerous complaints from every area of the reservation.

THE ABUSIVE PRACTICES

Prices

It is difficult to avoid the conclusion that prices charged at reservation

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[3] Tr., pp. 146, 530, 564, 937.

[4] In an economy with a per capita income of less than $1,000, 67 percent of that income is spent off the reservation. *The Navajo Ten Year Plan*, pp. 8, 12.

trading facilities are unconscionable. Excessive pricing constitutes one of the most abusive practices employed by traders. In an area where per capita income is one-fourth the national average,[5] outside observers are "stunned" by some of the highest prices encountered in the continental United States.[6]

The price survey conducted by the Commission's Los Angeles Regional Office discloses that trading post prices exceed the national average by 27 percent and the average for nearby "off-reservation service centers" by 16.7 percent.[7] These quantitative data, however, fail to reveal the magnitude of these differentials. The survey examined a broad spectrum of trading facilities: those located in areas of substantial population concentration, serviceable roads and nearby competitors; and those situated in isolated locations. A pattern of higher prices emerges in the more isolated posts. In view of wide price fluctuations among posts, reservation average prices do not carry the impact of prices at individual facilities. For example, the price for a pound of coffee averaged $1.25 reservation-wide.[8] The prices at individual posts, however, ranged from $1.00 to $2.25.[9]

Trader testimony seeking to justify these prices was received.[10] Subsequently, this testimony was analyzed.[11] We believe the prices exacted by trading posts can be most logically explained in terms of the lack of price competition resulting from the trader's monopoly, and inefficiency. The monopoly enjoyed by most trading facilities also accounts for the great variance in prices among all posts. The absence of price competition affords each trader enormous latitude in setting prices within his own sphere of influence. We would underscore that although prices fluctuate among trading posts, they remain consistently and excessively high throughout the reservation.[12]

Compounding the problem of exorbitant prices are instances of overcharging. The record contains allegations that traders defraud

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[5] Tr., p. 279.

[6] Tr., p. 125.

[7] Tr., p. 279.

[8] Tr., p. 265.

[9] Tr., p. 266.

[10] Tr., pp. 44-49.

[11] Tr., p. 410, *See also* Tr., pp. 269-71 (Testimony of Professor Larson, who disputes claims by traders that high costs of credit and transportation, combined with low volume of sales, explain the price differences).

[12] Tr., p. 274 (Testimony of Professor Larson, who agrees that in a truly competitive market there would be no excuse for the high prices found).

Navajos with erroneous totals and arbitrary additions to a credit balance.[13] Other complaints point to traders cheating Navajos outright.[14]

High prices are aggravated by the manner in which goods are offered for sale. Although there is an increasing adoption of self-service counters with individually marked prices, many posts still retain the traditional "bull pen" arrangement with goods displayed on shelves behind high counters. At such trading facilities, goods are inaccessible for inspection or quality comparisons;[15] articles are normally unmarked as to price.[16] The customer must request the items he wishes and the trader then brings the articles to the counter where he totals the prices. These prices are either memorized by the trader or they are cryptically listed near his cash register. The customers are often totally ignorant of the prices of individual items and, as noted *supra*, vulnerable to being overcharged.[17]

Credit Saturation

Fighting off the partial erosion of their territorial foundation, traders have maintained their monopoly through an expanded and ambitious policy of credit saturation. When the seasonal sale of livestock and wool constituted the principal source of reservation income, credit saturation was accomplished through the extension of long term credit during the off season periods. The Navajo stock raiser was typically indebted to one trading post because it was the only facility where he could obtain credit and later conveniently sell his lambs and wool. The trader could not predict exactly how much wool and livestock a customer would later offer for sale. In addition, the market in these commodities fluctuated constantly. To insure a margin of safety, the trader would allow his cus-

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[13] Tr., pp. 1181-2 (Mae Zah testified that in December 1971, she took her check from the trading post against the trader's wishes when her open account was $30. In response, the trader surcharged her account by $15. Mrs. Zah has made no purchases since that date. The trader continues to surcharge her account for each month she fails to discharge her open account. Her open account now totals $125). Other examples appear at Tr., pp. 27, 388 (customer's account balance continues to increase despite not trading at post for 6 months), 581.

[14] Tr., pp. 685, 697-8, 718, 929, 1143.

[15] Tr., p. 965.

[16] Tr., pp. 411, 449, 550, 719.

[17] Many complaints involve consumers whose illiteracy makes them especially susceptible to being overcharged. There is, in addition, the more general problem that these same Navajos do not even know the price being charged for individual items and, more often than not, are too timid to ask. Tr., pp. 411, 955.

tomers to spend only one-half to two-thirds of their anticipated income before it was received.[16]

The declining importance of stock raising has generated a shift from long term, seasonal credit to short term credit based on predictable monthly or bimonthly checks. The Navajo economy is now underwritten by the receipt of welfare and other government checks. These checks assure the trader the predictability and minimal risk necessary to extend credit up to the entire amount of a customer's known income. By doing this, total credit saturation is accomplished. The customer need only endorse his check to discharge his credit account. The Navajo consumer receives little or no cash to shop elsewhere[17] and is thus compelled to immediately commence charging against next month's check for this month's necessities.

Through perpetual credit saturation, the trader is able to capture and retain this consumer market. The following will describe the various devices through which credit saturation is accomplished.

Check Handling

To effect complete credit saturation, it is essential to gain physical possession over the Navajo's welfare or other government check. Control over Navajo checks is pursued in a variety of ways. Many traders demand that checks be mailed directly to the trading post before credit will be extended.[20] At trading facilities having Post Offices on their premises or acting as depositories for "general delivery" mail, the trader has immediate access to Navajo correspondence. Where separate postal facilities are located in the community, the trader often prepares a change of address card or composes a letter to the disbursing agent requesting that the check be mailed to the trading post.[21] To preserve the dubious legality of these maneuvers, the trader induces the Navajo to thumbprint the form or letter, thereby evidencing his signature. The Navajo is never informed of the consequences of his act; he is therefore confused when his checks begin to arrive at the trading post.[22]

Checks are sometimes received by the trader through theft. Due to geographic isolation, most Navajo homes are not serviced by postal delivery. Where available, few Navajos lease post office boxes. Correspond-

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[16] Adams, pp. 121-122.

[17] Tr., pp. 200, 327, 362-3, 528, 558-59, 649-51, 700.

[20] Tr., pp. 200, 386, 599, 603, 662-3, 867, 930, 510 *et seq.* (Miriam Crawford alleges that BIA Social Services' files document "hundreds of case records" complaining of traders requiring checks to be sent to trading posts before credit is given.)

[21] Tr., pp. 23, 31, 386, 509, 930.

[22] Tr., pp. 23, 379, 662, 1102, 1120.

ence is therefore received "general delivery" at the local post office. Frequently, the postmaster or a responsible postal employee is an agent or relative of the trader. Commonly, he examines Navajo mail, forwarding to the trader those letters containing government checks.[23]

Upon gaining physical possession over Navajo checks, the trader employs various tactics designed to compel the Navajo to apply the full amount to his account. It is not uncommon for the trader to open the envelope and examine the check before the customer knows it has arrived at the post.[24] When the Navajo comes to shop, the trader—never releasing his physical grip on the check—presents it to him for endorsement.[25] Often the customer is not even shown the amount of the check. The trader may obscure the dollar amount with his hand or lay the check facedown on the counter; frequently, he will only partly remove the check from its envelope.[26] If the Navajo insists on obtaining his check, he may be confronted with threats of withdrawn credit.[27] In several reported cases, such demands have instigated physical assault by the trader.[28]

To attain complete credit saturation, it is fundamental that cash be discouraged as a medium of exchange.[29] Most trading posts generally cash Navajo checks only for purchases made or to discharge a credit balance. If the amount of the check exceeds the outstanding credit balance, the excess is usually returned as a "trade slip" or "due bill," a note evidencing that the customer's account has been credited for the designated surplus.[30] The trader, however, seeks to insure that the credit balance will entirely consume the amount of the check. If the check prematurely arrives, the trader denies receiving it and encourages the

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[23] Tr., pp. 99, 336, 556, 562, 565-6, 874-5, 966-7, 1114, 1120, 1130.

[24] Tr., pp. 84, 99 (Even when mail is not opened by the trader, he holds it up to the light. If a check is enclosed, he withholds it until debts build up), 200, 386, 399 (affidavits introduced into the record as Commission Exhibits (CX) 13 and 14), 562-3, 599, 602, 610, 613, 700, 1102-3, 1149.

[25] Tr., pp 565-6, 700, 707, 728, 905, 974, 992, 1102, 1119, 1149, 1187.

[26] Tr., pp. 947, 1102.

[27] Tr. pp. 582-3, 592.

[28] Tr., pp. 563, 1119.

[29] The Navajo consumer can seldom, if ever, obtain hard currency by negotiating a government check. 25 C.F.R. Sec. 252.18 provides:

"Traders must pay all Government checks accepted in cash, merchandise, or credit to the full value of the check presented. The acceptance of cash, merchandise or credit for Government checks shall be at the option of the Indian in all cases."

[30] Tr., pp. 85, 113, 387, 580, 582, 583, 862-3 (Allen Lee testified that trader treats cash given for his check as a loan on his open account and charges 20 per cent interest), 966 (Teresa Begay stated that any cash is given as a loan at high interest rates).

Navajo to purchase more items on credit until the full amount of the check is exhausted.[31]

In one case, a Navajo woman received a government check providing an extra amount to purchase school clothing for her children. The trader refused to negotiate the check for cash. Consequently, the Navajo was unable to purchase the clothing and her children did not attend school.[32] If a Navajo needs cash for a special purpose, he must apply to the trader for a loan. Exorbitant interest rates typically attend such borrowing.

Bureau of Indian Affairs regulations require that trading post credit accounts be unsecured.[33] In actual practice, however, accounts are fully secured. One trader withholds a customer's check until the check for the following month arrives. At this time the month old check is negotiated. The trader is therefore able to introduce a measure of security into his credit accounts by retaining the current check as security for the currently accruing credit balance.[34]

Most traders are able to gain control over the income of customers by having checks diverted to the trading post before the Navajo receives them. In communities supporting more than one trading facility, competition actually assumes the form of competing for possession of welfare checks rather than attempts at price competition. Once the welfare check is obtained, credit saturation is assured and price competition is unnecessary. To entice a Navajo customer away from a rival trader, a trader must persuade the Indian to endorse a change of address form, designating the challenging post as his mailing address.

Due Bills

Credit saturation is also attained through the widespread employment

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[31] Tr., pp. 84, 99, 113, 200, 702, 929-31.

[32] Tr., pp. 766-7.

[33] 25 C.F.R. Sec. 252.1:

"A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States money or in credit on the traders' books at the option of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These receipts must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the trader's books in such manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

[34] Tr., p. 783.

of "due bills" or "tradeslips." Due bills are small pieces of paper bearing a customer's name and a monetary amount. They evidence an indebtedness to the Navajo by the trader for a designated amount. They are utilized in most transactions which result in money owing to the customer: trader purchases of wool, rugs or jewelry; Navajo purchases that do not entirely consume government checks. When the holder of a due bill thereafter makes a purchase at the post, the amount of the item is deducted and a new balance written on the slip.

Some traders contend that the issuance of due bills aids Navajo buying by simplifying and expediting transactions at the cash register. The issuance of due bills, however, serves the more fundamental purpose of facilitating credit saturation. First, it permits the trader to avoid the use of cash as a medium of exchange. Second, it restricts the Navajo's market mobility. Due bills are only negotiable at the facility at which they are issued. Therefore the holder is compelled to continue to patronize the issuing post. Third, abuse occurs since the due bill is the only evidence of the debt. It is negotiable only when tendered by the original holder. Since duplicate records are rarely retained by the trader-debtor, the risk of loss is assumed by the Navajo creditor. In the event of loss or misplacement, the trader is unjustly enriched by simply denying the existence of the due bill.

The issuance of due bills is prohibited on other Indian reservations by applicable BIA regulations.[19] Regulations addressed to the Navajo reservation do not proscribe the employment of due bills. Appropriate sections demand only that government checks or compensation for Indian products be paid in cash or credit.

Pawn

Some of the most offensive trader practices involve pawned Navajo items. Pawning personal possessions to obtain extra purchasing power is a prominent feature of the Navajo economy. To a Navajo, a turquoise pin or silver concho belt is not only an ornament but a source of ready capital. By pledging items, Navajos are able to supplement their meager income.

Present regulations contain minimum standards which fail to prohibit offensive conduct. One provision erects a confusing redemption formula

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[19] 25 C.F.R. Sec. 251.24:

"Traders must not pay Indians in tokens, tickets, store orders, or anything else of that character. Payment must be made in money, or in credit if the Indian is indebted to the trader."

wherein an original six month redemption period is continually extended for two months if the pledgor pays 25 percent of the amount due.[36] Thirty days before the expiration of each redemption period, the pledge is to be conspicuously displayed before forfeiture.[37] These regulations even differ from those applicable to the Hopi and Zuni reservations where the redemption period is one year with no provision for extension.[38]

When an item is pawned, the Navajo pledgor seldom receives the full market value for the pledged article. Typically, the assigned pawn value is only a fraction of the item's actual worth.[39] Some customers prefer the assignment of a low value to make redemption easier. For the majority of Navajos, however, the establishment of the pawn value is an adhesive transaction; their only option is to take what the trader is willing to offer. This pawning policy creates an unfortunate result once the redemption period expires. If the pawnor does not redeem his pledge, the pawn is declared "dead" and the trader is permitted to sell the item for its full market value. Consequently, the trader pockets any excess over the amount borrowed, *i.e.*, he does not have to account for the surplus above pawn value that is reaped upon sale. BIA regulations require

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[36] 25 C.F.R. Sec. 252.16(b):
"On the Navajo Reservation the period for the redemption of a pawn or pledge shall be 6 months unless at least 30 days prior to the expiration of such period not less than 25 per cent of the amount due has been paid, in which case the redemption period shall be 8 months; an additional period of 2 months shall be added to the redemption period for every additional 25 per cent of the amount due that may be paid . . . The provisions of paragraph (a) of this section with respect to display, forfeiture, and payment within any 30 day period of grace, shall be applicable also to pawns or pledges taken on the Navajo Reservation."

[37] *Ibid.*

[38] 25 C.F.R. Sec. 252.16(a):
"Traders may accept pawn or pledges of personal property for security of accounts due to them by Indians. Traders shall be liable for the market value of all pawns or pledges held by them. The market value shall be settled by agreement between the Indian and the trader at the time of the transaction. In all cases where pawns or pledges are accepted by the trader a written receipt shall be given the Indian showing (1) the date of the transaction, (2) the nature of the pawn or pledge, (3) the amount loaned thereon, and (4) its market value as agreed upon between the Indian and the trader. A pawn or pledge not redeemed within 11 months shall be displayed in a conspicuous place in the trader's store for a period of 30 days together with a notice stating that unless the amount due, which shall be specified, is paid before the expiration of the 30 days, such pawn or pledge will be forfeited. At the expiration of 12 months from the date of the original loan, a pawn or pledge not redeemed shall become the property of the trader, in which event the amount due shall be cancelled on the trader's books. Notice of such cancellation shall be given in writing to the interested Indian."

[39] Tr., pp. 114, 355, 672, 692-3, 738, 903, 1143-4.

only that the amount of the loan be cancelled.[40] A costly loss to the Indian becomes a windfall to the trader.

Pawn regulations demand that the pawnor receive a pawn ticket evidencing, among other things, the "market value as agreed upon between the Indian and the trader."[41] Although many posts have printed forms with space for this figure, this line is commonly left blank or will show only the amount borrowed.[42] Even where a market value is disclosed, there is no assurance that the figure shown relates to true value. Examination reveals that the inserted figure is typically an arbitrary value fixed by the trader, usually the amount of the loan. This practice produces disastrous consequences in the event a pawned item is lost, misplaced or stolen. The trader is then obligated to indemnify only to the extent of this specious figure.

Accepting pawn is another method by which the trader attains credit saturation. Upon pledging an article, the Navajo pawnor is allowed to purchase goods up to the designated pawn value. The regulations do not require that trading posts give the borrower the option of receiving cash for pawned items and many refuse to do so.[43] If his purchases do not exhaust the pawn value, the Navajo pledgor may be given a "due bill" for the unused amount. The majority of trading posts will accept pawn as security for cash loans as well as on credit purchases. Exorbitant interest, however, is usually exacted in such transactions. Where credit is extended for merchandise based on the security of pawned items, interest is seldom charged directly. Trading posts generally allow higher amounts of credit in such situations vis-a-vis a cash loan against a pawned item. The failure to charge interest is counter-balanced by having to pay high prices.

Particularly offensive are the usurious interest rates frequently charged in pawn transactions. Due to federal preemption principles, state usury statutes are not applicable to reservation businesses. BIA regulations are silent as to the maximum rate of interest allowable. Therefore, stated interest rates, although they vary greatly, commonly range as much as 60 percent Annual Percentage Rate and upward.[44]

A related problem concerns the flagrant Truth in Lending violations committed by traders. This Act was designed to inform consumers as to the actual costs of credit. The Navajos, as victims of a credit saturated

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[40] 25 C.F.R. Sec. 252.16(a).

[41] *Ibid.*

[42] Tr., pp. 114, 356, 389, 914, 1099, 1120, 1133, 1178.

[43] Tr., pp. 333, 936, 1121, 1147, 1168.

[44] Tr., pp. 388, 391 (Charley John testified that $18 interest was charged on a 3-month, $20 loan), 537, 569, 738, 858-9.

economy, are especially in need of the disclosures demanded by this legislation. Unfortunately, traders consistently fail to comply with the strictures of this Act. Interest rates are seldom properly disclosed.[45] Annual percentage rates are often miscalculated or omitted altogether.[46]

Many posts employ pawn tickets which, in form, substantially comply with the Truth in Lending Act. Attorneys for the United Indian Traders Association have even prepared a standard form for its members. However, these forms are not accurately and properly completed. Often, the form shows only the date of the loan and the total amount due; the finance charges are not separately stated.[47] When an interest rate is stated, it is usually a monthly rate or the rate for the entire redemption period; annual percentage rates are not specified.

A large volume of complaints against trading posts concerns "lost" pawn.[48] The recurrent pattern is for the customer to attempt to redeem a pledged item and discover that the article cannot be located. The Navajo is then informed that the pledge is "lost." This sequence of "lost" pawn occurs frequently. Often this occurs within a few weeks after the initial pawn transaction. In most cases, "lost" pawn is not replaced and the pledgor is not otherwise compensated.[49] If he protests vigorously, he may be offered another article as replacement. This item, however, is typically of inferior value to the pawned item.[50]

Two causes account for "lost" pawn: the item is actually misplaced and cannot be located; or the item is deliberately stolen. Complaints indicate that some "lost" pawn arises from theft. In one case, a Navajo woman was informed that her pawn was "lost" when she attempted to effect redemption. She was able, however, to walk into the pawn vault unobserved where she found the item in plain view. Upon confrontation, the trader refused to release the item and physically ejected the woman from the post. To recover the article, she returned to the post accompanied by a DNA attorney.[51]

Pawn is also forfeited as a result of confusion. Many pledgors are uncertain about redemption procedures or the actual final redemption date. Although pawn tickets usually note the date on which the item was

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[45] Tr., pp. 114, 665, 859, 1108, 1133, 1145.

[46] Tr., pp. 537-38.

[47] Tr., p. 114.

[48] Tr., pp. 87 (Peterson Zah asserted that "lost" pawn has on one occasion been found worn by a trader's relative), 114, 358-60, 547-53, 570, 585-7, 609, 641, 667-671, 691-3, 699, 705, 740, 860-1, 903, 913-4, 916, 949, 1105, 1120.

[49] Tr., pp. 112-3, 365, 586-7, 670-1, 673, 675, 692-3, 699, 740, 861, 870, 914.

[50] Tr., pp. 738, 1122-3.

[51] Tr., pp. 643-5.

pawned, the redemption date is occasionally omitted.[52] Navajo pawnors characteristically misunderstand BIA redemption procedures employed at the posts they patronize. If this trading post changes ownership or management, the redemption period may be unexpectedly and capriciously shortened as to both existing and new pawn.

Credit saturation also forces forfeiture of pawn. Our investigation discloses that it is common for some traders to engage in an abusive practice—"pawn hostaging"—whereby a pawnor is compelled to discharge his open credit account before he is permitted to redeem his pledge. Although these two transactions are unrelated, the trader demands that the unsecured account be cleared before any security is redeemed. When a welfare check arrives, the recipient discovers that it is enough to discharge only his credit balance; he is not permitted to apply this amount toward redemption.[53] If this continues for several months, the Navajo can only aspire to make the payment to postpone the redemption date for two months. In the interim, additional interest is charged. Ultimately, he may lose not only the item, but everything he had paid toward redemption.

Many traders never sell pawned items and retain pledges for years. Traders assert that the sale of pawn, whether forfeited or not, creates needless ill-will in their communities. Unfortunately, other traders do not adopt this altruistic attitude. Pawn is commonly sold before expiration of the redemption period.[54]

Sanitation and Quality

Complaints refer to the deplorable physical conditions and unwholesome quality of foodstuffs at some trading posts. Many Navajo consumers, while describing conduct engaged in by posts they patronize, stated that meat, fruit and vegetables are often of poor quality[55] or spoiled.[56]

Student investigators conducting the Southwest Indian Development Survey in 1968 reported a cat walking on meat at one trading post.[57] At another, a dog was observed urinating on a sack of flour.[58] During

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[52] Tr., pp. 332, 554, 660.

[53] Tr., pp. 115, 148.

[54] Tr., pp. 109, 148, 629-30, 955.

[55] Tr., pp. 150, 958.

[56] Tr., pp. 393-4, 533-4, 575, 662, 700-1, 863, 950, 935 and 976 (resolutions from three Chapter Houses concerning spoiled food at local trading posts), 973.

[57] Southwestern Indian Development, Inc., *Traders on the Navajo Reservation*, p. 22.

[58] *Ibid.*

the instant public hearings, one witness recounted seeing a snake in the meat locker of an off-reservation trading post. Upon inquiry, the trader replied that he employed the reptile to keep away the rats.[59]

Policy toward the return of spoiled items differs among trading posts. Some facilities accept them back; others refuse to permit their return.[60]

There is uncertainty as to which entity has primary jurisdiction in this area. The United States Public Health Service has conducted sporadic sanitation inspections. BIA has initiated license revocation proceedings against one trading post for unsatisfactory sanitary conditions. Many facilities continue to be maintained in dismal condition. The quality of meat and produce offered may be poor; and the effectiveness of inspections by government agencies is uncertain.[61]

Weights and Measures

Some Navajos have charged that trading post scales are altered. Scales are employed in two transactions, both of which are the subject of complaints: various items are weighed before purchase from the post; Navajo wool and livestock are weighed before sale to the trader. Testimony discloses that some livestock scales are inaccurate.[62]

Purchase of Indian Products

Often the trader enjoys the position of unique liaison between the Navajos in his community and the white world. He not only brings goods into the community, but may be the only conduit for the purchase and marketing of Navajo goods. In this capacity, the trader is capable of exerting a significant influence on the productive life of his community.

This authority can be creative and beneficial. John B. Moore, proprietor of Crystal Trading Post, and Ed Davies, owner of Two Gray

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[59] Tr., p. 151.

[60] Tr., pp. 593, 701.

[61] Tr., p. 631 (Louis Denny: "It appears that the State of Utah does not regulate the trading posts that are operating in the State of Utah, or outside the reservation. We even asked the State of Utah to help us out in these sewers . . . because of the sewer dumping into the water . . . and we drank it and myself and my children have suffered with that because we went to the hospital and we found out that there were worms inside the stomach of the children and myself and they investigated from the hospital and they found it was caused by the water of sewage. They run into the river. We asked for correction from the health service and also from the Bureau and they haven't done anything about this correction to the sewer dumping into the river . . .").

[62] Tr., pp. 543-4, 864, 975.

Hills Trading Post, were central in developing markets for Navajo rugs. They were so influential in suggesting the designs, materials and techniques of their weavers that the styles produced by these areas became generic names for rugs of superior quality.

Such instances of generous patronage do not, however, typify present day traders. Many traders engage in exploitive practices. Weavers are paid only a fraction of the market value their rugs later bring in sales to white tourists.[63] Even in the prestigious Two Gray Hills area, weavers commonly receive only a fraction of the true market value for their rugs. San Juan County Social Worker, Carmie Toulouse testified that a rug woven by one of her clients was sold to a trader for $30. One month later, she observed the rug on sale at the same post for $250.[64] Gross underpayment for Navajo rugs becomes more offensive when it is remembered that weaving is tedious, exacting and meticulous work.

Underpayment also attends the purchase of wool and livestock.[65] Although no longer the dominant source of Navajo income, livestock is still an important income subsidy for many people. Where the stock raiser has access only to the trading post, he must often settle for a substantially lower price per pound than the general market rate.

Employment

Frequently, the trader acts as employment agent for his Navajo community. In this capacity, the trader employs Indians for railroad and firefighting work.[66] In view of few reservation employment opportunities, this is a particularly important position.

As an employment agent, however, the trader has additional leverage over credit saturation and community control. Invested with the discretion to make recommendations for hiring from among all eligible workers, he often prefers those having credit accounts or pawned items at his trading post. The trader then sells the chosen employee the clothing and supplies demanded by the position and sometimes even transportation to the job. When the job is completed, the Navajo is expected to return to the post with his check. If he does not, he may expect not to be hired again.

Finally, the trading post is central to Navajo hiring by itself acting as an employer. Trading posts are estimated to employ approximately 400 persons.[67] Trading facilities are typically managed by a white man and

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[63] Tr., pp. 649, 933, 975, 977, 991, 1126-70, 1136.
[64] Tr., p. 649.
[65] Tr., pp. 532, 864, 969.
[66] Tr., pp. 199, 392, 1138.
[67] Tr., p. 505.

wife, with additional help from children or relatives. Pressured by the Navajo tribal legal department, posts have recently commenced hiring local Navajo residents. Although half of trading post employees are now Navajo, most are employed in menial positions.[67] Some employers do not hire Navajos at all.[68] Those few that enjoy positions of responsibility are compensated at a lower rate than comparable white employees.[70]

Attitude

The Navajos are a proud and dignified people. Territorial isolation and credit saturation obviate the necessity for ordinary business courtesy at many posts. Navajos complaining about abusive trading practices often assert that traders lack respect for them or for the Navajo people.[71] When complaints are directed to traders, the Navajo is silenced by the perennial, curt reply: "If you don't like it you can go to the store across the street." The nearest store is typically located twenty miles down a rutted dirt road.

Many traders are well intentioned, earning moderate profits in an occupation that is exacting and tiring. Nevertheless, a significant minority of trading posts are riddled with abuses. We believe that the need for correction and stricter control is acute.

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[67] Tr., pp. 899-900, 925-30 (Fred Morez testified that the trader paid employees $94 every two weeks. While working 9 hours per day, Navajos were never told the hourly rate. Navajos received no sick leave or vacation until employed 5 years. White employees received sick leave after two months), 988-9.

[68] Tr., p. 968.

[70] Tr., pp. 925-30.

[71] Tr., pp. 228 (Louise Ella Emerson testified that a trader told her that Navajos are "like dogs"), 343-6 (Glenn R. Chaves testified that the owner of El Gran Motors in Tuba City considered all Indians "thieves," and employees were "required to sign an affidavit allowing him to take any shortage that might occur at the service station out of the employee's check"), 385 (Charley John stated that a trader chased an S.I.D. student out of his post), 421-2, 891-2, 929, 963-7, 966-8, 1177-8.

Chapter V

OFF-RESERVATION PROBLEMS

INTRODUCTION

Although most Navajos reside on the Navajo Reservation, a significant number live in adjacent off-reservation areas.[1] Despite geographical separation, the economic status of the off-reservation Navajo is not appreciably better than his on-reservation brother. In general, virtually every negative aspect of Navajo-trader relations that marks the reservation trading post system can be applied to off-reservation situations.

A similar pattern of credit saturation emerges as the dominant characteristic at off-reservation trading facilities. Prices at rural posts remain high. Plagued by similar income problems,[2] many off-reservation Navajos are dependent upon rural trading posts to satisfy their economic needs.

In certain respects, the off-reservation Navajo may be more disadvantaged than his reservation counterpart. He is not protected by BIA regulations directed at traders licensed to engage in business on the Navajo Reservation.[3] He does not enjoy the advantages and protections of tax-free status, occupation of trust land, and financial assistance from designated programs that the on-reservation Navajo receives.

ABUSIVE TRADE PRACTICES

The off-reservation Navajo is subject to two forms of offensive conduct: abusive commercial practices which also occur at reservation trading posts; and certain violative conduct which is unique to off-reservation trade. In the former category, cited practices include Truth in

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[1] There are 30,000 Navajos residing in areas adjacent to the reservation. The largest concentration of such off-reservation Indians is found in the region east of the reservation, primarily in New Mexico. Over 29,000 of these Indians—served by 27 trading posts—live in this vicinity (commonly referred to as the "checkerboard" area). Their cultural, social and demographic characteristics are the same as on-reservation Navajos.

[2] Unemployment is observably high. There is substantial reliance upon welfare and other government checks for subsistence.

[3] 25 C.F.R. Sec. 252.1 *et. seq.*

p. 30 blank

Lending violations,[4] and unmarked prices.[5] In the latter category—conduct unique to off-reservation communities—two areas merit mention: pawn transactions and transactions involving the purchase and repair of automobiles.

As on the reservation, pawn is important in off-reservation transactions. In addition to the barrage of repugnant pawn-related practices that confronts the reservation Navajo, the non-reservation Navajo encounters certain conduct peculiar to off-reservation situations. These unique, offensive practices are possible because off-reservation trading facilities are not subject to BIA regulation. They are under the statutory jurisdiction of the state in which they are located. State pawn and usury laws, especially in New Mexico, are characteristically permissive.[6]

Despite the serious nature of complaints against off-reservation trading posts, no business is as frequently and consistently criticized as are the many automobile dealerships and repair facilities rimming the reservation. Navajos have been sold faulty, misrepresented and even dangerous cars, trucks and automotive parts.[7] In some instances, the machine becomes inoperable before the Navajo arrives home with his purchase.[8] Regardless of how soon after sale the breakdown occurs, many automobile dealerships refuse to acknowledge or honor any express or implied warranties of merchantability. Adjustments are occasionally made to those Navajo purchasers supported by legal counsel. The more typical situation, however, is one in which no relief is offered.

Our investigation discloses that the actual sale of cars and trucks is frequently accomplished through fraudulent and abusive practices. Used vehicles are typically sold at prices grossly inflated above their normal retail market value.[9] Where the cost of credit is not camouflaged in the purchase price, interest is exacted at high rates.

New and used car dealerships accept pawnable Navajo jewelry and handicrafts as security for the credit purchase of vehicles. Not only will the car agency typically lack a pawn license, but, often, the car agency will avoid the requirements of applicable pawn laws by couching the

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[4] Tr., pp. 227-228, 234, 1170.

[5] Tr., pp. 615, 628, 637.

[6] See, *e.g.*, 50-6-21 N.M.S.A. 1953 Comp. In addition, laws are not adequately enforced. Charmaine Crown, Director of Consumer Protection for New Mexico, publicly admitted that her office does not have a sufficient staff to make a "significant contribution" to regulation of traders, Tr., p. 253.

[7] Tr., p. 909.

[8] Tr., pp. 798, *et seq.*

[9] Tr., p. 420 (Gary Witherspoon related reports that average profits per car sold in Gallup, Flagstaff, Farmington, and other towns rimming the reservation are over twice the national average).

transaction as an outright purchase of the items. The agency, however, retains the articles under an oral commitment not to resell. Valuable Navajo jewelry and rugs are also taken to secure amounts owed or in lieu of delinquent payments.

Our investigation reveals that many of these pledges are obtained through questionable conduct. Particularly offensive is a "hostaging" practice whereby the pawn is held for debts other than the original undertaking. Even when the original debt is discharged, the car agency continues to extort payments through retention of the pawn. After full payment of all debts, the pawned items are sometimes not returned and no provision is made for compensation for the converted articles.[10]

Abusive conduct can also attend the signing of the purchase agreement. Instances occur where Navajos are pressured into signing blank sales contracts. These contracts often contain different conditions than those represented orally. Sometimes the Navajo customer is never given a copy of the contract he entered.

Offensive conduct can also be present when insurance is "sold" to Navajo purchasers. Car sales are often tied to sales of insurance by persuading Indians, who might be ignorant of commercial practices, that insurance must be purchased from the car dealer; charges for insurance may also be added without so informing the Indian.[11]

Finally, our investigation discloses a variety of other abusive practices involving car purchases. Among these are the following: assuring the purchaser that a defective vehicle is in "good condition"; charging for repairs when these were represented to be within the ambit of a warranty; failing to correct defects as guaranteed; repudiating the guarantee outright; providing insurance coverage without delivering the policy or other evidence of such coverage. In addition, vehicles are often repossessed on the reservation in direct contravention of tribal regulations prescribing the procedure in such cases.[12]

Problems involving car sales agencies are aggravated by the fact that no dealership has been established on the reservation. Diligent efforts by various Indian groups have failed to entice the major American manufacturers to enter the reservation market.[13] Examination of the reservation market suggests that by objective criteria—dealership densities and dealership qualifications—large manufacturers may be acting unreasonably by refusing to grant licenses for reservation dealerships.[14]

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[10] *State* v. *Ames Bros. Motor & Supply Co., Inc., et al.*, Superior Ct. of Navajo County, Arizona, Dkt. No. 13306 (1972).

[11] *Ibid.*

[12] Tribal regulations set forth the procedure in such cases at 7 NTC 307.

[13] Tr., pp. 207-210, 500 *et seq.*

[14] *Ibid.*

Chapter VI

RESPONSIBILITY

INTRODUCTION

Although the traders are immediately liable for the offensive practices cited in this report, the traders are also subject to regulation by the Bureau of Indian Affairs and the Navajo Tribe. The following will detail the participation of each entity in the regulation of trader conduct.

BUREAU OF INDIAN AFFAIRS

History

Federal control over Indians was first established by the Continental Congress in 1775. In 1784, the Congress of the Confederation placed the administration of Indian affairs within the War Department. In 1834, legislation was enacted to create an Office of Indian Affairs, transferring jurisdiction over Indian administration from the War Department.

By Act of August 15, 1876, Congress delegated to the Commissioner of Indian Affairs the sole authority to appoint traders and to make appropriate rules and regulations to govern such traders.

In 1937, the Commissioner of Indian Affairs issued his most recent rules and regulations governing traders licensed to engage in business on the Navajo reservation. These regulations purport to define standards of conduct which must be followed by traders operating on the reservation.

Enforcement of Regulations

The Commissioner of Indian Affairs has delegated to the Navajo Area Director the authority to supervise the operation of local trading posts. This responsibility has, in turn, been delegated to the Navajo Area Real Property Officer. The testimony of the present Real Property Officer sheds considerable light on the enforcement of current regulations.[1] This official testified that, although he believed there had been

[1] Tr., pp. 423 *et seq.*

abusive pawn-related practices on the reservation for four or five years, he had taken no action to correct the situation.[2] The witness further stated that during the past eight years, he could not recall one single instance where a Navajo consumer had filed what was considered to be a valid complaint against a trading post.[3] He conceded that during the past three years he had not even visited a trading post to discuss commercial practices with traders;[4] when he went to one trading post three years ago, it was only for the purpose of showing a new member of his staff how a trading post operated.[5]

The testimony of the Real Property Officer is replete with explanations for inaction on the part of the Bureau of Indian Affairs. Basically he cited lack of personnel and funds to enforce what he considered inadequate regulations. When queried if the trader problem was considered important, the witness testified that he did feel it was important ". . . but it's been a historical situation wherein prior to the time I came here I understood they [prior BIA officials] had done nothing on it *either*."[6]

A former attorney for the Navajo Tribe, and Director of the Navajo Economic Planning Office, testified that "the Secretary of the Interior has . . . never taken any protective action to protect Navajo consumers."[7] This witness stated that although the Secretary of the Interior has taken action to fix the price of Coca-Cola charged at the Grand Canyon to protect tourists, he has refused to regulate prices charged by traders licensed to do business on the Navajo reservation.[8] This witness further testified that he ". . . got the distinct impression that as a matter of policy, the Bureau would not—was not looking into these matters and enforcing them."[9]

The present Bureau of Indian Affairs Navajo Area Director testified that he could recall no change in the Bureau of Indian Affairs' attitude toward trader conduct since his childhood on the reservation.[10]

Peter McDonald, Chairman of the Navajo Tribal Council, testified that ". . . the Bureau of Indian Affairs . . . had, by the non-enforcement of these regulations, informally repealed the trader regulation and ig-

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[2] Tr., p. 437.
[3] Tr., p. 443.
[4] Tr., p. 447.
[5] Tr., p. 448.
[6] Tr., p. 452 (emphasis supplied).
[7] Tr., p. 493.
[8] Tr., pp. 493-4.
[9] Tr., p. 495.
[10] Tr., p. 12.

nored the enforcement obligation imposed upon it by the statutes."[11]

THE NAVAJO TRIBE

The Navajo Tribe has available a powerful weapon to influence the conduct of traders licensed on its reservation: trader leaseholds. It is essential to remember that the Bureau of Indian Affairs merely *licenses* a trader to conduct business on the reservation. Once his license is obtained, the trader must negotiate a lease with the Tribe for the rental of the land on which he proposes to erect his trading post. The Tribe is therefore in a secure position to demand inclusion within its lease provisions such strictures as it deems necessary to compel the trader to operate in a fair manner. The Tribe, however, has never employed even minimum leverage against trader abuse.

In 1954, the Navajo Tribe passed a Tribal Council resolution authorizing the establishment of an Advisory Committee to determine the final terms and conditions of leases and to resolve disputes with traders.[12] In 1954, the tribe also passed a resolution establishing a trading supervisor, whose duties would include responsibility for effecting compliance with the terms and conditions of trader leases and supervision of prices charged by trading post operators.[13]

To further regulate traders, the Navajo Tribal Council passed a resolution and enshrined in its tribal code a lease form to be employed for all trader leases.[14]

The Navajo Tribal Council has established a Commerce Department to regulate trading posts on the reservation. This department, however, has attained a questionable record in achieving any regulation. The director of the Commerce Department stated during the public hearings that the Department perpetuates the very evils it is supposed to attack; the Department in fact insulates the trader from regulation rather than compelling regulation or compliance.[15]

STATE ACTION

Because the Navajo reservation is a federal enclave, the States of

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[11] Tr., p. 1.
[12] 5 NTC Sec. 761.
[13] 5 NTC Sec. 764.
[14] 5 NTC Sec. 766.
[15] Tr., p. 311.

Arizona, New Mexico and Utah are powerless to prohibit offensive practices committed by traders located within their respective state boundaries. The Supreme Court of the United States has concluded that states cannot exercise jurisdiction on the Navajo reservation. In *Warren Trading Post* v. *Arizona Tax Commission*,[16] the Court stated that ". . . federal legislation has left the state with no duties or responsibilities respecting the reservation Indian. . . ." This doctrine of federal preemption on the reservation has been recognized by the State Attorneys General.

The Director for Consumer Protection of the State of New Mexico testified that she could do nothing about problems occurring on the reservation because she lacked jurisdiction to enter this federal land.[17]

The Assistant Attorney General of Arizona, however, has stated that, although exercise of state jurisdiction is "tenuous," he is prepared "to prosecute on-reservation transactions if no other aid is rendered."[18]

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[16] 380 U.S. 685 (1965).

[17] Tr., p. 255.

[18] Tr., pp. 1311-1312. This witness noted that upon approaching the Field Solicitor of BIA to correct abusive reservation practices, he was informed that BIA had "inadequate enforcement resources." *Ibid.*

Chapter VII

RECOMMENDATIONS

INTRODUCTION

The Federal Trade Commission investigation[1] is not the first investigation to expose these conditions. Other investigations have occurred; other reports have been written.[2] To date, no effective effort has been made to remedy the wrongs.

PROPOSED BIA REGULATIONS

Introduction

Many of the abuses in the trading post system are traceable to deficiencies in the present regulations and inadequate enforcement for a number of reasons. In addition, there is significant absence of other needed regulations. Accordingly, we recommend extensive revision of existing provisions and promulgation of additional regulations.

Revision of Existing Regulations

The United States Code[3] provides that

> [t]he Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.

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[1] We gratefully acknowledge the assistance of ten Navajo aides who, in addition to acting as interpreters, provided substantial orientation and assistance to our investigation. These are as follows: Ralph Begay, Russell Begay, Donald Benally, Tonny Bowman, Elmer Gambler, Key Goldtooth, Bessie Gonzalez, Mary Ann Jones, Archie Silago, Wilbert Tsosie.

[2] *E.g.*, Navajo Trading, Report by B. Youngblood, Principal Agricultural Economist, Office of Experiment Stations, U.S. Department of Agriculture (1934); Navajo Survey, Report by Moris S. Burge, Field Representative, Bureau of Indian Affairs (1949); *Traders on the Navajo Reservation*, Southwestern Indian Development, Inc. (1968).

[3] 25 U.S.C. Sec. 261.

Pursuant to this statute, BIA issued in 1937 a set of regulations addressed to persons engaged in trade with the Navajo, Hopi and Zuni tribes.[4] The aim of these regulations, which are still in effect, was to govern the trader and protect members of those three tribes from unjust and unreasonable trader practices. The Navajo reservation is the largest Indian reservation in the country in area and in population. Yet, the regulations affecting the Navajo (and Hopi and Zuni) consumers have fewer and less effective controls than those affecting all other reservation Indians.

We recommend that 25 C.F.R. Sections 252.1, *et seq.* be consolidated with the regulations contained in 25 C.F.R. Sections 251.1, *et seq.* The latter sections are addressed to traders licensed to do business on all other Indian reservations. Generally, these regulations are more stringent than those governing Navajo traders. Exhaustive research and inquiry failed to disclose why the Navajo traders were exempted from coverage under these broader provisions. The result attained from consolidation would be one comprehensive body of regulations directed at all traders licensed to do business on any Indian reservation.

Section 252.4[5] provides that

> [n]o person employed by the United States Government shall have any interest or concern in any trade with the Indians, except for and on account of the United States; and any person offending herein shall be liable to a penalty of $5,000 and shall be removed from his office.

This regulation clearly prohibits a trader from being employed by the United States Postal Service. Many of the abuses of the trading post system are made possible by the trader's control over welfare and other government checks received by his customers. Control over mail distribution is frequently exercised by relatives of the trader or by relatives of trading post employees.

We wish to affirm that the trader performs a valuable and desired service by accepting delivery of mail for those Navajo customers wishing to use the trading post as a mailing address. Moreover, in view of the lack of reservation employment opportunities,[6] we would not recommend prohibiting designated relatives from being employed in a postal capacity. Consequently, we suggest that Sec. 252.4 be retained in its present form. To respond to those abuses which the current system permits, however, we offer two suggestions:

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[4] 25 C.F.R. Secs. 252.1, *et seq.*

[5] 25 C.F.R. Sec. 252.4.

[6] *The Navajo Ten Year Plan*, p. 11 (1972).

First, we advocate that a new regulation be promulgated to prohibit the illegal receipt or opening of mail. Although federal law outlaws this practice,[7] we believe that a specific BIA proscription is necessary to emphasize the serious nature of the offense.[8] We suggest that the new section be designed to stop all of the repugnant practices relating to mail detailed in this report.

Second, we suggest that, where no Post Office exists, the tribe investigate alternative postal facilities to the trading post. Consideration should be accorded the establishment of mail receiving facilities at local Navajo Chapter Houses and schools. Generally, these structures are located in close proximity to a trading post.

Section 252.7(a)[9] requires that

> [e]ach trader shall keep in a form approved by the Commissioner of Indian Affairs accurate records of his business activities and render annually not later than March 1 a report to the superintendent showing capital investment, increases and withdrawals, whether in the form of cash, merchandise, or other property; the value of buildings and improvements, furnishing and fixtures, miscellaneous assets such as automobiles, trucks, or other property essential to the business; a complete record of all liabilities, including accounts, bills and notes payable, and the amount of cash received and disbursed, balances, whether on hand, on deposit, or due the store; the accounts, and notes receivable, and the pawns of (sic) pledges taken. The names and respective interests of all persons participating in the business shall be furnished.

At present, the provision demands the submission of aggregate figures only. The widespread employment of written receipts in individual trading transactions, however, often permits deception when a Navajo consumer misplaces or loses a pawn ticket or trade slip. Navajos frequently do not comprehend the importance of these written documents. Fraud may also occur in cash purchases of Navajo rugs, jewelry and handicrafts that are not documented by written receipt. Therefore, it is recommended that the regulation be expanded to respond to individual disputes by requiring more detailed records detailing individual transactions. We suggest that standardized forms of receipt be prescribed.

We also propose a related regulation requiring a uniform system of bookkeeping. Investigation discloses that accounting methods vary widely among trading posts. Moreover, examination of bookkeeping procedures at selected posts reveals numerous opportunities for abuse

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[7] 18 U.S.C. Secs. 1701, 1702.

[8] As outlined *infra*, an aggrieved addressee would also be given a private right of action.

[9] 25 C.F.R. Sec. 252.7(a).

and concealment through lack of prescribed standards detailing what information must be reported.[10]

We recommend that a system be designed to facilitate ease of bookkeeping, while permitting ready access to those facts and figures necessary to determine if accurate records are being compiled and if proper rental payments are being made on leased sites.[11] To assure compliance, we recommend that the regulation require audits on an annual basis. These should be performed by the Tribal government.

Section 252.7(b)[12] states that

> [t]he price of all articles of merchandise placed on sale shall be plainly and visibly marked by the trader.

Our investigation indicates that this regulation is consistently ignored by trading posts. We do not recommend revision of this regulation; we view the present language as adequate. We do conclude, however, that violations of this section arise from lax enforcement of its provisions. Therefore, we urge that attention be directed at strict enforcement of the regulation and that specific penalties be proposed for infractions.

We recommend revision of Sec. 252.8.[13] This regulation states that

> [a] licensee of a trading post shall be the owner of the business. He shall be responsible to the Commissioner of Indian Affairs for the entire operation of the trading post, including acts of commission or omission of his employees, and for reports required by the Commissioner of Indian Affairs.

This provision should be contrasted with the language of Section 251.14,[14] applicable to traders licensed to engage in business on all reservations other than the Navajo, Zuni and Hopi, requiring that

> . . . [t]he business of a licensed trader must be managed by the bonded principal, who must habitually reside upon the reservation, and not by an unbonded subordinate.

A potential for abuse inheres in absentee ownership. At this time, however, we do not advocate that revised Sec. 252.8 reflect the language of Sec. 251.14. We believe that designated abuses can be controlled through dissemination of ownership information. To implement this policy, we propose the requirement that each post prominently dis-

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[10] During the investigation, figures were obtained itemizing, for the last 11 years, rental payments from trading posts holding tribal leases. These data indicate that a significant percentage of posts had not even reported their gross annual sales for 1970 and 1971.

[11] The system should be designed after consultation with the traders.

[12] 25 C.F.R. Sec. 252.7(b).

[13] 25 C.F.R. Sec. 252.8.

[14] 25 C.F.R. Sec. 251.14.

play a notice containing proprietary information. Such information would include: the form of business entity; the names and addresses of all other posts owned by the business entity or in which it retains a proprietary interest.

In addition, it is advisable to demand that the bonded principal diligently supervise the conduct of his employees. We therefore recommend that the regulation require that a responsible employee be present during all business hours to transact business. Complaints were received during the course of the investigation that individuals were unable to redeem pawn, cash checks or engage in other needed services because a responsible individual, *i.e.*, the manager or other authorized person, was away from the trading post for hours or even days at a time. Generally, the manager does not authorize his employees to engage in designated transactions. The regulation should also underscore that the proprietary owner is responsible for all actions of his employees.

Finally, we recommend that absentee owners be required to appear semi-annually at local Chapter House meetings to answer complaints concerning the operation of their trading posts.

Pursuant to Section 252.9,[18] each trader is required to post a $10,000 bond. This amount was established in 1937 during a period of severe economic depression. We believe that $10,000 is inadequate to guarantee trader commitments. We recommend that this regulation be amended to establish a bond in the amount of $25,000 or any *larger* sum as may be designated by the Commissioner of Indian Affairs. We strongly urge that the BIA Superintendent or Area Director should no longer have authority to establish a lesser sum.

Moreover, we recommend that Sec. 252.9 be consolidated with Sec. 252.20 which specifies the purposes for the trader's bond. Section 252.20 presently requires that

> [t]raders shall be kept responsible through bond for any loss of Indians' property in their possession, including credit on books.

This section requires revision. As discussed above, testimony indicated frequent refusal to indemnify pawnors for lost or misplaced pledged items. Therefore, it is recommended that consolidated Sec. 252.20 be revised to permit private enforcement actions by aggrieved pledgors and

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[18] 25 C.F.R. Sec. 252.9: "Application for license must be accompanied by a bond in the name of the proposed licensee in the amount of $10,000, or such less sum as may be designated by the Superintendent or the Commissioner of Indian Affairs, with two or more sureties approved by the Superintendent, or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13). The bond shall be for the same period covered by the license."

that the trader's bond constitute a fund for any restitution ordered. We believe a private enforcement remedy would significantly increase compliance with this regulation. The procedures for making claims against the bond should be clearly spelled out.

Amendment of Sec. 252.10[16] is recommended. At present, it is customary to automatically award licenses for the maximum period permitted (25 years). We recognize that long-term licenses are necessary to amortize investments, to provide security of tenure, and to encourage capital improvements. Nevertheless, licensees should be exposed to periodic review to ascertain if there has been compliance. If they do not meet reasonable established standards of compliance, their licenses should be cancelled. Therefore, we recommend that the maximum license term of Sec. 252.10 be retained, but that the regulation be amended to require a systematic and careful review every five years.

We propose that the Tribe be accorded exclusive authority over this review. At present, BIA approval is necessary to execute a tribal decision regarding the removal of undesirable licensees.[17] Our examination of trader lease files at BIA offices in Window Rock revealed that most licenses will expire in eight years. We suggest that a temporary regulation be promulgated authorizing the Tribe to evaluate every preexisting lease at the end of this period. During the review, consideration should be given to whether that particular trading post is serving the economic needs of the community, and whether particular alternatives to license renewal might better serve the needs of the community. Similar considerations should form the basis of the evaluation at the expiration of any future license term.

Section 252.16[18] is a detailed regulation directed at pawn and other security devices. Testimony obtained at the hearings established that (1) the existing regulation is inadequate and (2) there has been disregard of even the lenient requirements dictated by the regulation in its present form. We recommend that this regulation be amended.

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[16] 25 C.F.R. Sec. 252.10: "Licenses to trade shall not be issued unless the proposed licensee has a right to the use of the land on which the business is to be conducted. The license period shall correspond to the period of the permit or lease held by the licensee on restricted Indian land. The license period in no event shall exceed 25 years. Licenses for periods not to exceed 10 years may be issued by the area director."

[17] 25 C.F.R. Sec. 252.28. This obstacle may cure itself if tribal assumption of BIA duties, proposed by Area Director Anthony Lincoln, becomes a reality. *Los Angeles Times*, July 18, 1972, p. 20. *The Independent*, Gallup, New Mexico, July 26, 1972, p. 1.

[18] 25 C.F.R. Sec. 252.16: "(a) Traders may accept pawn or pledges of personal

The present Section 252.16 permits unjust forfeiture procedures. Current provisions require the trader to physically display the pawned item "in a conspicuous place" for a thirty day period before the pledge is forfeited. To insure that pledgors are aware that their security is imperiled, it is recommended that, not later than 30 days prior to expiration of the redemption period, the trader-pledgee be required to serve upon his pledgor written notice containing a description of the item, a statement of interest, principal and amount due, and a warning of impending forfeiture.[19] This would be in addition to the physical display directed by the present regulation.

We recommend that the redemption period be amended. Section 252.16(b), applicable to pledge transactions only on the Navajo reservation, provides a complicated redemption formula that is often difficult to administer.[20] This works a hardship on both the pledgor

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property for security of accounts due to them by Indians. Traders shall be liable for the market value of all pawns or pledges held by them. The market value shall be settled by agreement between the Indian and the trader at the time of the transaction. In all cases where pawns or pledges are accepted by the trader a written receipt shall be given the Indian showing (1) the date of the transaction, (2) the nature of the pawn or pledge, (3) the amount loaned thereon, and (4) its market value as agreed upon between the Indian and the trader. A pawn or pledge not redeemed within 11 months shall be displayed in a conspicuous place in the trader's store for a period of 30 days together with a notice stating that unless the amount due, which shall be specified, is paid before the expiration of the 30 days, such pawn or pledge will be forfeited. At the expiration of 12 months from the date of the original loan, a pawn or pledge not redeemed shall become the property of the trader, in which event the amount due shall be cancelled on the trader's books. Notice of such cancellation shall be given in writing to the interested Indian. (b) On the Navajo Reservation the period for the redemption of a pawn or pledge shall be 6 months unless at least 30 days prior to the expiration of such period not less than 25% of the amount due has been paid, in which case the redemption period shall be 8 months; an additional period of 2 months shall be added to the redemption period for every additional 25% of the amount due that may be paid. The provisions of paragraph (a) of this section with respect to display, forfeiture, and payment within any 30-day period of grace, shall be applicable also to pawns or pledges taken on the Navajo Reservation."

[19] Some traders now employ such a notice system. This system offers several advantages: adequate warning of impending forfeiture would be assured; the notice would constitute a written statement of the amount the trader claims is due; the notice could serve as written evidence of any pawn abuses practiced by the trader; Navajo confusion would be abated.

[20] "... the period for the redemption of a pawn or pledge shall be 6 months unless at least 30 days prior to the expiration of such period not less than 25% of the amount due has been paid, in which case the redemption period shall be 8 months; an additional period of 2 months shall be added to the redemption period for every additional 25% of the amount due that may be paid. ..."

and the trader. We therefore recommend that the redemption period provisions of Sec. 252.16(a) be adopted.[21] This subsection offers the advantages of a firm twelve-month redemption period and avoids the bewilderment and confusion of partial redemptions. At the end of the eleventh month, the 30 day display period and notice requirement would be triggered.

For several reasons, many traders favor adoption of a twelve-month redemption period. First, it is in their own economic interest to preserve valuable jewelry and other merchandise in their community. Second, many already adhere to a one-year period before expiring pledged items. Third, a firm twelve-month period would facilitate trader compliance with the disclosures required by the Truth in Lending Act.[22] Finally, should a trader desire to renew a pledge, he would do so by treating it as a completely new transaction, issuing a new pawn ticket, making new disclosures, and imposing a new finance charge.

The regulation contains the inequitable provision that the trader may retain any surplus amount received from the sale of expired or "dead" pawn. Testimony at the hearings indicates that the secured item has a market value considerably higher than the amount of the loan. Consequently, the trader derives unconscionable windfalls from those Navajos who are financially unable to reclaim their pledges.

Accordingly, it is urged that the regulation be amended to require the trader to return, within 30 days, any surplus amount obtained from the disposal of "dead" pawn. The trader should be permitted to retain an administrative fee, computed as 10 percent of the amount loaned.[23] He should also be obligated to make meaningful efforts to sell the item at its fair market value. To make this provision truly comprehensive, the pledgor should, within 15 days after sale, be furnished with notice of the selling price and of any surplus due him.[24] At the same time, copies of the sales invoice and the pawnor notification should be supplied to the Tribal government. Finally, to impede credit saturation, it should be required that any surplus be returned in only United States currency.

A most important area for consideration is the form of exchange

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[21] ". . . A pawn or pledge not redeemed within 11 months shall be displayed in a conspicuous place . . . for a period of 30 days . . . before . . . expiration. . . ." This section is now applicable to pledge transactions on the Zuni and Hopi Reservations.

[22] 15 U.S.C. Secs. 1601 *et seq.*

[23] We recommend that this fee be computed on the principal, rather than the surplus, to encourage the allowance of higher loans.

[24] At this time, the pledgor should also be furnished notice that the debt is cancelled. This is pursuant to present regulations. 25 C.F.R. Sec. 252.16(a).

given for pawned items. To perpetuate credit saturation, the trader customarily grants credit in exchange for pledged items. Many traders do not charge interest on credit accounts or for redemption of items pledged against extension of credit. Moreover, many Navajo customers prefer to obtain merchandise credit for pawned articles. Therefore, we recommend that the receipt of cash be an alternative to the extension of merchandise credit for pledged items. Strict sanctions should be applied to those traders not recognizing the cash option.

An additional area that demands attention is interest rates. Currently, the trader is not subjected to any usury regulation. High interest charges are common incidents of pawn transactions. Section 252.16 should be amended to establish maximum interest rates. It is suggested that interest ceilings be established, comforming to the maximum permitted by the law of Arizona, i.e., 24 percent.[25]

It is recommended that Sec. 252.16 be revised to require complete credit disclosures demanded by the Truth in Lending Act. The Navajo, no less than any other American consumer, is entitled to "meaningful information with respect to the cost of . . . credit."[26] Therefore, it is recommended that Sec. 252.16 be amended to contain express language that, at the time an item is pawned, the consumer receive a written disclosure statement conforming to the requirements of Regulation Z, Sec. 226.8.[27]

It is recommended that revised Sec. 252.16 specifically require disclosure of the annual percentage rate in situations where Regulation Z provides an exception.[28] This is needed to promote uniformity in all transactions, to educate the Indian consumer as to the actual cost of the loan, and, to avoid confusing the trader as to when disclosure of the A.P.R. is required.

We believe Sec. 252.16 should also be revised respecting its incorporation of "market value" as the amount that must be paid to Navajo pledgors in the event of lost pledges. Frequently, traders deliberately undervalue this figure to receive an unconscionable windfall when pawned items are "lost." We therefore recommend substitution of the

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[25] A.R.S. Sec. 44-1624.

[26] 12 C.F.R. Sec. 226.1(a)(2).

[27] 12 C.F.R. Sec. 226.8.

[28] 12 C.F.R. Sec. 226.8(b)(2)(i) and (ii).

"(2) The finance charge expressed as an annual percentage rate, using the term 'annual percentage rate,' except in the case of a finance charge

(i) which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(ii) which does not exceed $7.50 and is applicable to an amount financed not exceeding $75."

term "replacement value." This would be defined as an amount which would adequately compensate the Navajo in the event his pledge is lost.[29] It would be a previously agreed-upon value. We regard this term as fair and administratively workable.

We recommend that Sec. 252.16 be amended to require comprehensive records for all pawn transactions. Specifically, we urge that ledger sheets be designed to include the following information: transaction number, name of pledgor, address of pledgor, date of transaction, replacement value, description of pledge, amount loaned—cash, amount loaned—credit, finance charge, amount financed, amount paid by pledgor, date paid by pledgor, date of notice/display, date pledge sold, name of purchaser, address of purchaser, amount received, amount returned to pledgor, date of return. Ledger records should distinguish cash transactions from merchandise transactions.

To resolve disputes when pawn tickets are misplaced or when pledged items are lost, copies of these records should be sent monthly to the Navajo Tribe. This procedure would establish the replacement value of any lost item by depositing a copy in the hands of a neutral party. Stringent record keeping would also remove the opportunity to conceal income from the sale of dead pawn, a practice which results in loss of tribal income through decreased rental payments.

A final recommendation concerns refund procedures. Difficulties frequently occur when pledged items are redeemed before the expiration date. We recommend that a fixed formula be established for refunds, stating the method for computing unearned finance charges. We suggest the following formula: a pro rata rebate of the unearned finance charge minus a specified administrative fee such as 10 percent of the unearned finance charge.[30]

Section 252.17[31] is directed at book credit procedures. Present regulations do not require the trader to make any of the specific disclosures customary in our commercial society. At the time an open

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[29] Many traders indicate that the reason they do not place a "market value" amount on the pawn ticket is because customers believe they are attempting to purchase the article. The United Indian Traders Association has itself recommended this change to solve the problem. Tr., p. 369.

[30] We offer the following example as illustration of how this formula would work: Item with replacement value of $200 pawned for cash on July 1. Amount of loan $50. Interest 24 percent Annual Percentage Rate. Term of pawn 12 months. Amount due at end of 12 months: $62. Item redeemed on February 20. Unearned interest—$4 (4 months) less 10 percent—40¢. Amount due trader: $50 + $8 + 40¢ = $58.40.

[31] 25 C.F.R. Sec. 252.17: "A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States money or in credit on the trader's books at the op-

end credit account is established, the Navajo consumer is not furnished written statements of his credit limit, the period of time after which the account will become delinquent, the amount of late or finance charges that can be assessed, or the circumstances under which his credit will be reduced or terminated. While his account is active, he receives no periodic statements enumerating payment credits, balance due, and interest assessed. The upshot of these practices is deception of the Navajo consumer and reinforced dependency on the trader when disputes involving his account occur.

To prevent the abuses accompanying open end credit transactions, we propose revision of this regulation. Although we recognize dependence of Navajos on trader credit, it is essential that they receive that information which will enable them to become discerning consumers in a credit-based economy. Therefore, it is recommended that Sec. 252.17 be amended to require that all open end credit applicants be furnished initial disclosure statements complying with Regulation Z, Sec. 226.7.[32] The applicant should also be given information relating to his credit limit and the circumstances under which it will be reduced or terminated.

In addition, we recommend that Sec. 252.17 be revised to require periodic billing statements when the account is in use. Such statements should detail the previous balance, daily transactions, payments and credits, new balance, finance charges, and all disclosures mandated by the Truth in Lending Act. Itemized receipts for every purchase should be included.[33] Furthermore, all payments on the account should specify their source: cash, check, wool purchase, pawn, or livestock.

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tion of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These records must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the trader's books in such manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

[32] 12 C.F.R. Sec. 226.7. Although we recognize that there is usually no finance charge imposed on grocery accounts so that Truth in Lending disclosures would be triggered, this information is important to the customer and should be required.

[33] Our investigation disclosed numerous instances where the only record of a transaction was an illegible scratching on a piece of paper. An itemized cash register receipt would perhaps be satisfactory.

Since the granting of credit partly underwrites the Navajo economy, Sec. 252.17 should incorporate a provision that written notice must precede the reduction or termination of credit. Such notice should describe with particularity the reasons for the contemplated action. Traders have sometimes invoked threats of revoked credit to silence complaints and compel resolution of disputes. Such an amendment would inhibit improper use of credit cancellation and threats to do so.

Section 252.18 [34] states that

> [t]raders must pay all Government checks accepted in cash, merchandise or credit to the full value of the check presented. The acceptance of cash, merchandise, or credit for Government checks *shall be at the option of the Indian in all cases.* (emphasis supplied)

Although we do not recommend that cash be the only medium of exchange for welfare and other government checks, we do propose that the cash option be made a true alternative. Many Navajos are unaware that they have a hard currency alternative. Those consumers who do attempt to exercise their option sometimes encounter trader intimidation, harassment and reprisal. Feeble enforcement accorded the provisions by BIA officials has contributed to credit saturation and its concomitant abuses.

We urge that these regulations be amended to mandate strict enforcement of the cash option. A heritage of trader abuse and retaliation involving the option demonstrates the need for language to authorize suspension or license revocation [35] and fine for infractions of the cash alternative. Furthermore, in view of inadequate reservation banking facilities, the trader should be required, as a condition of doing business, to have enough cash available to cash all checks presented for payment.

Section 252.17 parallels Sec. 252.18, providing that payments in consideration for Indian products or labor be in cash or credit at the Indian's option. We advocate revision of Sec. 252.17. At present, the Navajo cannot dictate the form of payment he receives; his only option is whether or not to sell his products or services to a particular trader.[36] To encourage the development of a cash economy and the termination of Navajo dependence upon a particular trading post,[37] we propose the following recommendations. First, payment for Indian products or labor should be made, at the Navajo's option, in cash or

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[34] 25 C.F.R. Sec. 252.18.

[35] Authority for license revocation emanates from 25 C.F.R. Sec. 252.28: ". . . [t]he trader is subject to revocation of license . . . in the event of any violation of the regulations in this part."

[36] Our investigation discloses that trading posts give higher prices for products when credit is the medium of consideration than when cash is paid.

[37] We believe the recent establishment of a Navajo cooperative for the marketing of rugs, jewelry and handicrafts is beneficial.

as a credit applied to past purchases. Second, payment should not be permitted in trade slips or in future credit.

Section 252.19[38] demands that the trading post be maintained "in a clean, sanitary, and presentable condition." This regulation has suffered inadequate enforcement due in part to confusion as to which entity—BIA, the Navajo tribe, or the Public Health Service—has primary responsibility for inspection. Many trading posts are maintained in poor condition. Instances of spoiled and infected food occur. Furthermore, the public record suggests inadequate enforcement of laws affecting Navajo health by some state officials.[39] We recommend that this regulation be amended to invest one authority with exclusive enforcement jurisdiction. In addition, a provision demanding stricter compliance is imperative to guarantee the health and safety of the Navajo consumer.

A final regulation that merits revision is Sec. 252.22. This section prohibits the trader from donating ". . . money or goods to the performance of any Indian dance or ceremony." This regulation serves no positive purpose other than to discourage Indian cultural events. Its enactment traces to an era when governmental policy encouraged the cultural assimilation of Indians into white America. We recommend that this regulation be amended to prohibit only political contributions to candidates running for tribal office.

We believe that the following regulations are adequate in their present form and do not require revision: 25 C.F.R. Secs. 252.1, 252.2, 252.3, 252.5, 252.6, 252.11, 252.12, 252.13, 252.14, 252.15, 252.21, 252.23, 252.24, 252.25, 252.27, 252.27(a), 252.27(b), 252.27(c).

Proposed Additional Regulations

To terminate various trading abuses, it is required that additional regulations be promulgated. These, with the above revised provisions, will constitute a comprehensive program to discourage future offensive conduct. The following recommended regulations are therefore proposed.

An area of needed regulation is trading post prices. Our investigation

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[38] 25 C.F.R. Sec. 252.19: "The traders shall keep both their premises and places of business in a clean, sanitary, and presentable condition at all times and shall avoid exposure of foodstuffs to infection from the air, dust, insects or handling. It shall be the duty of the health officers of the reservation and their assistants to make periodical inspections, recommend improvements, and report thereon to the Commissioner of Indian Affairs or his duly authorized representatives."

[39] Tr., p. 631.

discloses that unreasonably high prices are charged at many trading posts. The absence of any price regulation on the Navajo reservation should be contrasted with the limited regulation provided for other reservations pursuant to Sec. 251.22.[40] This latter section requires ". . . that the prices charged by licensed traders [be] fair and reasonable. . . ."

There is no justification for excluding the Navajo consumer from the protective ambit of Sec. 251.22. It is therefore recommended that, as an initial measure, this regulation be made applicable to all reservations. Additionally, it is proposed that regulations be designed to establish a systematic program of price ceilings for essential commodities such as basic foodstuffs. While price fixing should be avoided,[41] it is advocated that BIA economists study the feasibility of percentage markups. Evaluation should consider any extra costs of doing business on the reservation, including credit risks. We also suggest that comparison be made to off-reservation prices, similar to the survey conducted by the FTC staff this past summer. Finally, we recommend that the burden be placed on the trader to justify any price higher than that established pursuant to these regulations.

Another area that merits regulation is unconscionable interest rates in credit transactions. We recommended previously herein the revision of Sec. 252.16 to include a usury provision. We now propose that a comprehensive usury regulation be fashioned to reach all forms of credit or loans. High interest rates are a feature of the trading system. The United Indian Trader Association endorses the imposition of interest ceilings to give reservation traders guidance in commercial transactions. It is therefore recommended that maximum interest rates be established in consonance with an applicable state provision. Specifically, we suggest that the Arizona limit of 24 percent be adopted as the interest maximum for trader pawn transactions.[42] Since many

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[40] 25 C.F.R. Sec. 251.22: "It is the duty of the superintendent to see that the prices charged by licensed traders are fair and reasonable. To this end the traders shall on request submit to the superintendent or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, livestock owned on reservation, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good and merchantable."

[41] 25 U.S.C. Sec. 261 gives the Commissioner of Indian Affairs power and authority to specify prices at which goods shall be sold to Indians.

[42] A.R.S. Sec. 44-1624. We do not endorse the adoption of the New Mexico statute setting the maximum allowable rate to be charged by traders and pawnbrokers [50-6-21 N.M.S.A. 1953 Comp.]. This statute allows an effective rate of 48 percent per annum with a minimum charge of $5.00 or 10 percent of the loan, whichever is greater.

traders now adhere to a 24 percent limit as disclosed by examination of pawn tickets during the trading post price survey, a regulation establishing this as a maximum rate should not work a hardship.

A fourth area that requires regulation is "pawn hostaging." This term refers to a practice whereby the trader insists that a customer discharge his credit account before redeeming pledged items. We recommend that a regulation be promulgated outlawing this practice. The redemption of pawn and the payment to a credit account are two entirely distinct transactions. It is unfair to retain control over pawned merchandise to secure payment of an open end credit account.

A final area that demands regulation is the retaliatory practices of traders. Our investigation discloses instances of trader reprisals and threats of retaliation against Navajos complaining of abusive conduct. We recommend that a new regulation be promulgated to make retaliation against a complainant, or threats thereof, actionable. Provision should be made for private enforcement by aggrieved consumers, stipulating minimum damages.

ENFORCEMENT OF REVISED AND PROPOSED REGULATIONS

The Bureau of Indian Affairs is presently charged with the enforcement of trader regulations. We recognize the special expertise BIA commands in Indian Affairs; we believe, however, that the Bureau no longer should be the sole enforcer of promulgated regulations.

Despite the wording of Sec. 252.28 that "(t)he trader is subject to revocation of license and forfeiture . . . of bond in the event of any violation of the regulations," only one revocation proceeding has been initiated in recent years.[43]

We recommend that primary enforcement responsibilities be granted to the Navajo Tribe. To be effectual, the Tribe must have sole authority over trader licensing. Too often in the past, lease applications have languished because of BIA inaction.[44] It must be remembered that BIA, in the exercise of its trust responsibilities, must give final approval to tribal recommendations to either grant or terminate a lease.

We believe that BIA can and should delegate enforcement responsibilities to the Navajo tribal government. An alternative approach might be to contract for these services with the Tribe on an interim basis. We recognize that the Tribe might now lack the sophistication

[43] This was for violation of sanitary provisions. Tr., p. 160.

[44] Tr., p. 39.

and expertise to administer a set of complex regulations. However, we feel it would be far better for the Tribe to learn from their mistakes than to perpetuate the existing system of nonenforcement.[45]

The Los Angeles Regional Office believes that with a staff of from four to six trained investigators, adequately financed by either tribal revenues or BIA funds, the Navajo Tribe could effectively enforce the revised regulations we propose.

We have suggested to certain Navajo tribal officials that we might, with Commission approval, provide investigative training on a limited basis. We stress, however, that the Tribes should ultimately enjoy sole authority for licensing and regulating traders. This is consistent with legislation introduced during the last Congressional session which would have granted exclusive licensing and enforcement responsibilities to the Tribes.[46]

In the interim, we believe that the National Headquarters of BIA should appoint a general trading regulation supervisor to assist and supervise the Navajo Tribe in carrying out their newly created enforcement responsibilities. The appointment of a neutral BIA employee to act as the Commissioner's direct representative in Window Rock facilitated our investigation. Because this individual had no connection with the BIA Navajo Area Office, coordination with local officials was conducted on an impartial and objective basis.[47]

To insure that tribal politics do not impede effective enforcement, we feel it is imperative to provide for private enforcement of the trading regulations by injured individuals. BIA and the Navajo Tribe should consider that certain gross offenses such as "losing" pawn, interfering with mail and "pawn hostaging" might carry a treble damage provision. (We are convinced that the first award of treble damages for a "lost" item of valuable jewelry will end such losses forever.)

In granting the Navajo a private right of action, we have carefully considered the alternative courts in which suit might be brought. Although state court, federal court, and the Bureau of Indian Affairs

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[45] BIA may wish to consider applying this suggested enforcement approach to other tribal governments as well.

[46] "To Amend Certain Laws Relating to Indians," Sec. 2033, HR 2379, 92d Congress (1st session).

There is no guaranty, of course, that tribal enforcement will be effective. Navajos are no less fallible than other human beings. Based on our investigative experience, however, we believe the time has come to give the Navajo Tribe the opportunity to enforce regulations directly affecting the lives and destinies of their own people.

[47] Tr., p. 96.

are possible forums, we recommend that private actions be cognizable in Navajo and other appropriate tribal courts. First, federal preemption principles prevent state courts from exercising jurisdiction over reservation traders.[48] Second, federal courts are geographically inaccessible to most reservation plaintiffs.[49]

We therefore urge that the existing tribal court be designated as the proper forum. The Navajo's confidence and trust in tribal court justice might encourage him to invoke his rights under the above regulations. Language difficulties would also be avoided.

We also recommend that the trader be given access to tribal courts for all disputes arising from commercial transactions. The trader, like his Indian customer, is equally entitled to judicial redress on any cause of action against his customers arising out of the conduct of his business. It will probably be necessary to amend the Navajo Tribal Code to authorize the tribal court to hear cases involving traders.[50] We further recommend that the Tribe insert a covenant in all trader leases providing that the trader, as a condition of doing business on a reservation, submit to the jurisdiction of the tribal court in all disputes arising from alleged violations of trader regulations or commercial transactions.

CONSUMER EDUCATION

We recommend a comprehensive program of consumer education. An urgent area for inclusion in any such consumer education program is instruction in legal rights and remedies. If BIA regulations are revised and private rights of action granted to aggrieved consumers, Navajos will need to know what legal recourse they have. Since many of the proposed regulations will depend upon private action for enforcement, Navajos should receive education in basic legal rights and corrective procedures.

A second area of educational need is in the day to day commercial transactions of the Navajo: pawn, charging purchases, and buying food. As often stated herein, pawn is an everyday occurrence for most Navajos. Yet, few Navajos understand the requirements of a pawn

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[48] *Worcester v. Georgia*, 6 Pet. (U.S.) 515, 8 L. Ed. 483.

[49] For example, with respect to the Navajo reservation, the nearest federal courts are located in Phoenix, over 200 miles south of the reservation, and in Albuquerque, over 150 miles east of the reservation border.

[50] The jurisdiction of the Navajo Tribal Court is currently limited to "[a]ll civil actions in which the defendant is an Indian and is found within its territorial jurisdiction." 7 N.T.C. Sec. 133(b) (1970).

transaction. Nor do they appear to understand the obligations of a charge account. These facts will take on greater significance if the regulations proposed in this report are promulgated. A serious effort is therefore needed to insure full understanding of these routine commercial transactions which play such an impotant part in a Navajo's life.

The Navajo must also receive the background needed to become a more discerning buyer. Hopefully, as the hold of the trader is lessened by competition, more consumer products will become readily available to the Navajo.

Any education program must also respond to the problems generated by automobile buying. Our investigation indicates that car dealers engage in highly questionable practices on unsophisticated Navajo purchasers through deceptive credit procedures and unfair repossession practices. Accordingly, there is a need for instruction on the purchase and financing of major durables, experiences that are alien to the Navajo and that embrace the potential for expensive mistakes.

A final area to be included in a consumer program is instruction on the technical aspects of insurance. As a western economic institution, insurance is alien to traditional Navajo life patterns. The nature of credit transactions demands that there be guidance on credit life insurance and automobile insurance policies.

Perhaps the most formidable obstacle to surmount is to design the program from the Navajo perspective. The culture and lifestyle of the Navajos resist answers based on the experiences of other minority (and majority) groups. The program must consider how the Navajo consumer asks questions; his confidence in advertisements and radio messages; his attitude toward non-Navajo merchants; his cultural traditions, lifestyle, and buying habits. Therefore, local participation in planning an effective and flexible program is imperative for proper instruction on Navajo consumer rights. This program must also consider several unique obstacles.

First, special consideration must be given to linguistic differences. Many Navajos over thirty do not speak or understand English; of those who have some command of English, many do not attain the requisite fluency for understanding consumer transactions.[51] A consumer program should be delivered in Navajo to insure maximum comprehension. With increased proficiency in English, bilingual instruction could be instituted. In view of those elderly Navajos who may

[51] One-half of Navajo adults over 25 do not read or write English, and one-third cannot speak it, *The Navajo Ten Year Plan*, p. 14.

never learn English, however, maximum exposure should continue to be given in the Navajo language.

Related to language barriers is the problem of illiteracy. Some progress has been attained. In 1955, there were approximately 100 Navajo high school graduates.[52] By 1965, this figure had increased to 600.[53] In 1970, almost 2000 graduates were reported.[54]

Unfortunately, these gains are overshadowed by comparisons to educational level data for the general United States. Whereas the average number of years of school attendance for a Navajo adult is five years, his non-Navajo counterpart attends school for 12 years.[55] As some form of college education becomes an increasingly common experience for most non-Navajo youth, only 2.7 percent of the Navajo labor force has matriculated to a collegiate institution.[56]

Since a significant minority of the Navajo population is illiterate, a consumer program must be designed to accommodate these persons. A possible solution would be to incorporate consumer messages into Navajo language radio broadcasts. Employment of radio messages would also inform those Navajos who reside in inaccessible rural areas. Most radio stations located in towns surrounding the reservation have daily Navajo language broadcasts. These broadcasts attract vast Navajo listening audiences. They are designed to give general news and news of the community to the Navajo listener, as well as sell the sponsor's product. These Navajo broadcasts are an ideal medium for consumer education.

The following subjects embrace those areas of Navajo life where consumer education is needed:[57]

Consumer Role in Society: The Marketing System
Making Consumer Choices in a Free Enterprise System
Managing Finances; Using Banks, Savings and Loan Institutions, Credit Unions
Simple Arithmetic and Interest Rates
Contracts
Consumer Credit and Credit Life Insurance
Installment Buying and Pawn Transactions
Food Selection and Shopping Methods

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[52] Navajo Tribe, *The Navajo Ten Year Plan*, p. 15.
[53] *Ibid.*
[54] *Ibid.*
[55] *Ibid.*
[56] The Navajo Tribe, New Industrial Opportunity in Navajoland, "Education and Training."
[57] Many of these topics are suggested by the curriculum of a consumer education program developed for the Pueblo Indians of New Mexico, who have many of the same problems as the Navajos.

Nutrition and Food Preparation
Clothing: Choosing Quality at the Right Price; Proper Methods of Care
Homes: Financing Homes; Furnishing Homes
Transportation Costs: Auto, Truck, and Tractor Purchase; Repairs; Insurance and Financing
Health Care and Services
Social Security, Life Insurance, the Costs of Dying
Understanding Advertisements
Buying from Salesmen
Consumer Protection by Consumer Groups Themselves
Consumer Complaints—Where to Get Help
Business Help for Consumer Problems
Consumer Protection: Tribal, Local, State, Federal
Consumer Services of Community Action Agencies
Consumer Services of Public, BIA, Head Start and Other Schools and Programs
Cooperatives for Consumers
Producer and Marketing Cooperatives

ALTERNATIVES TO THE TRADING POST

Two commercial enterprises have been suggested as alternatives to the trading post system. Establishment of such businesses would contribute to eliminating abusive trader practices.

The Co-op

One recent response to the trading post system has been the establishment of co-operatives by the Navajo community. At present there are only a few co-operatives. The successful example that has been set by the Pinon co-operative, however, demonstrates the potential for this kind of economic alternative.

Pinon is a small, isolated community located near the center of the reservation. For years there was only one trading post in the community. This trading post was the subject of numerous complaints by consumers. All efforts to secure corrective action were ignored by the Bureau of Indian Affairs and by the Tribe. In response, community leaders and the DNA concluded that a co-operative must be established in the community to give local Navajo consumers an alternative to the trading post. This co-op began operations in April, 1971.[58]

The co-op has attained a remarkable degree of success. During the early weeks, it earned approximately $100 per day in gross sales. Today, it grosses approximately $1,000 per day. After six months the co-op

[58] Tr., pp. 1020 *et seq.* *See also* Tr., pp. 25-29, 212-223.

achieved self-sufficiency. The co-op presently boasts 640 members, each of whom pay a $1.00 fee to become a member.[59]

The success of the Pinon co-operative is easily explained by comparison of its prices to the prices charged by the nearby trading post. Co-op members can purchase the same quality and quantity of goods for $19.00 that they can buy at the trading post for $25.00. The marked prices at the trading post are approximately 32 percent higher than those offered at the co-op. This price differential however, does not disclose the entire picture. In the nine months that the Pinon co-op was operating in 1971, it grossed approximately $70,000 in sales. After deducting for all expenses, it had $13,000 in profits. These profits were returned to the customers. When this refund is considered in the above evaluation, prices at the trading post are 61 percent higher than prices charged at the co-operative. It should be noted that both of these stores purchase their goods from the same supplier, Associated Grocers.[60]

The Pinon co-op presently conducts operations on a strict cash basis. It is in the process, however, of establishing a separate co-operative to act as a credit union. This co-op will make only secured loans. Its goals are to keep interest rates low and to retain all jewelry or other items that secure these loans within the reservation. The importance of establishing a credit union is dual. First, it will compete directly with the trading post for the credit business of the community. Second, it will permit those people who are dependent upon credit to free themselves from trading post credit saturation and take advantage of the lower prices offered by the co-op. It has been found at the Na-Ha-Tee co-op near White Cone that lower prices are not enough to terminate the binds of credit saturation that produce dependence on the trading post.[61]

The Window Rock Fedmart

The future of the trading post system is unknown. If modernization and other changes are effected, it may survive. On the other hand, the establishment of modern retail outlets on the reservation may relegate the trading post to the history book. This is what has occurred in Window Rock, Arizona, with the establishment of the Fedmart.[62]

Fedmart is a San Diego-based corporation which operates 43 stores throughout the southwestern United States. These stores are basically

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[59] *Ibid.*
[60] *Ibid.*
[61] *Ibid.*
[62] *Tr.*, pp. 117, *et seq.*

discount outlets, offering a full line of retail merchandise including food, clothing, hardware, and gasoline.[63]

At a cost of approximately $600,000, the Navajo Tribe constructed a building in Window Rock to house a modern Fedmart Discount Store. In 1968, the Tribe entered into a lease with this corporation for the operation of the store. This lease—similar to conventional trading post leases in that it contains provisions for a 25-year term and a 1½ percent gross receipts rental—has some unique features. One provision in the lease requires Fedmart to give preference to Navajos for employment. At present, 53 of 82 Fedmart employees are Indians. The lease also contains a covenant which requires Fedmart to maintain price levels for retail merchandise at its store at Window Rock which shall be the same as prices charged by its other stores in southern California and Arizona.[64]

This clause compels Fedmart to maintain its prices at a level unheard of on the reservation. While the volume of business cannot support two discount stores, the Navajos have obtained the benefits of competition and the Fedmart has made a profit.

The Fedmart has been successful. In the year ending August 1972, its gross sales were over $7 million. Navajos with access to transportation drive miles to patronize the Fedmart. It is even attracting persons residing off the reservation. In an area in which the Chairman of the Board of Fedmart contended had the highest prices he had ever seen in the United States, Fedmart is able to maintain prices that are among the lowest in the country.[65]

After its experience in Window Rock, Fedmart desires to establish one or two stores as large as the one in Window Rock in other parts of the reservation. Fedmart would then like to construct throughout the reservation 15 strategically located smaller stores with the ability to gross approximately $1 million in sales.[66] Such an arrangement would generate sufficient volume to permit competitive pricing.[67] Mobile vans could fan out from such central locations to serve customers in remote areas lacking transportation.

Fedmart has expressed a willingness to eventually turn over all of its operations on the Navajo reservation to the Navajo Tribe.[68]

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[63] *Ibid.*

[64] Tr., p. 122.

[65] *Ibid.*

[66] Tr., p. 127.

[67] Tr., p. 129. Volume purchasing, central distribution and effective management techniques also contribute to this goal.

[68] Tr., pp. 127, 130-131, 135-136.

We believe such a proposal makes economic sense.[69] It strikes a good balance between serving the needs of the Navajo people while preserving the benefits of competition (through clauses limiting prices to those existing in trading areas where they have active competition).[70]

While the present Fedmart store in Window Rock does not extend credit on the basis of pawned items or otherwise engage in pawn transactions, they do have credit accounts to finance large purchases such as appliances to those Navajo customers with adequate incomes.[71] A modern credit system could be established as part of the retail system envisioned in the Fedmart proposal. Several credit unions have sprung up on the Navajo reservation and they may be a partial answer to the need for financing credit purchases. However, extensive recommendations for new credit systems are beyond the scope of this report.

[69] Our support of such a proposal should not be interpreted as an endorsement of Fedmart, or any other business entity. The Navajo Tribe may wish to consider making such arrangements with any large volume retailer from whom they can obtain favorable terms.

[70] Tr., p. 122.

[71] Tr., p. 132.

Appendix A

HISTORY OF THE NAVAJO PEOPLE

It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American history without contemporary significance. . . . Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians even more than our treatment of other minorities, reflects the rise and fall of our democratic faith.[1]

The Navajos call themselves *Dineh*, "the people."[2] According to origin myths, Navajo man evolved through four underworlds before emerging in the mountains of southern Colorado and by the Pacific Ocean. From there Navajos converged in *Dinetah* or "Old Navajo Land," an area bounded by the Continental Divide, by the San Juan and La Plata mountains, and by the Carrizo, Lukachukai and Chuska ranges.[3]

Anthropology, ethnology, archaeology and linguistics of course suggest a different genesis. Most authorities contend that the Navajos entered the United States from northern Canada.[4] Exact dating of

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[1] Felix Cohen, "The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy," 62 *Yale L. J.* 348, 490 (1953).

[2] The appellation "Navajo" does not appear in their language. The exact derivation of the word is in dispute. The pueblo dwellers of Zuni referred to them as *Apachu*, meaning "enemy" or "stranger". The invading Spanish refined this title to *Apache*. In 1626, Geronimo Zarate Salmeron, a Spanish cleric, described a separate tribe of Apaches whom he titled *Apaches de Navahu*, explaining that the term derived from the Pueblo or Tewa word for "large cultivated field." Other scholars accept this Tewa origin but contend it refers to an area where the Navajos were farming. Still others adopt a Spanish derivation from *navaja*, "clasp-knife," or *nava*, "fields" or "flat land." See Edgar L. Hewitt, "Origin of the Name Navaho," 8 *American Anthropoligist* 193 (n.s., 1906); Frank D. Reeve, "Early Navajo Geography," 31 *New Mexico Historical Review* 299-300 (October 1956).

The Spanish orthography, "Navajo", rather than the Anglicized "Navaho" is adopted herein since federal records employ the former spelling.

[3] John Upton Terrell, *The Navajos* pp. 1-3.

[4] Linguistic analysis places Navajo among Athabascan languages, indigenous to a group of tribes located within the interior of northwestern Canada. These tribes had migrated to North America from Asia by means of a land bridge—now a water passage, the Bering Straits—between the two continents.

Generations later, they slowly migrated to the Southwest, traveling along the western edge of the Great Plains.

See Evon Z. Vogt, "Navaho" in *Perspectives in American Indian Culture Change.*

p. 62 blank

their arrival in the Southwest is speculative, but some scholars advance a date of 1000 A.D.[5]

Slowly migrating along the western edge of the Great Plains, the Navajos settled without opposition in Dinetah. They continued to engage in hunting, food-gathering and raiding, occupations common to a migratory people. Of profound significance were their contacts with the Pueblos, a neighboring tribe which had once occupied portions of the area in which the Navajos settled. Distinguished by an affluent agricultural economy and a highly sophisticated culture,[6] the Pueblos influenced the Navajos to adopt irrigated agriculture, thereby becoming a more sedentary people. Although embracing many Pueblo customs and even religious beliefs, the Navajos remained a distinct and fiercely independent people. The most significant developments in their culture would not occur until contact with Europeans.

The first documented encounter between Navajos and non-Indians occurred in 1583. Exploring the vast Southwest domains which Spain claimed, a small company of Spaniards encountered "peaceful Indian mountaineers who brought us tortillas even though we did not need them."[7] This and later expeditions introduced the horse to the Southwest.

In 1598, Don Juan de Onate arrived in New Mexico as governor of the province. Accompanied by an impressive entourage of soldiers priests, servants, settlers and thousands of livestock, he intended the establishment of a permanent colony. This goal was often delayed by Onate's futile explorations for the fabled Seven Cities of Cibola and other treasure cities.

The Navajos had no formal contact with this community. However, they frequently made daring raids, taking sheep and horses. In time, small herds of sheep were acquired. Nevertheless the Navajos still remained primarily an agricultural people; the transition to a pastoral economy had not yet been completed.[8]

Spain's policies to her colonial possessions were characterized by

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[5] Clyde Kluckhohn and Dorothea Leighton, *The Navaho* p. 3.

[6] The Pueblos raised corn, pumpkins, beans, gourds and cotton, and manufactured a variety of stone implements and tools. They also produced beautiful textiles and intricate jewelry. Their most remarkable accomplishment was the cliff houses constructed on canyon walls.

[7] Terrell, p. 19. The mission was led by Antonio de Espejo and Fray Bernardino Beltran. It is plausible that there were encounters between the Navajos and the Coronado expedition of 1540 although no mention is made in the preserved documents.

[8] Kluckhohn and Leighton, p. 5.

arrogance and cruelty.[9] The Pueblos, early subjugated by Onate, were held in a system of chattel slavery in violation of royal decrees prohibiting enslavement of Christianized Indians. Aligned with the civil authorities represented by Onate was the Catholic Church, which had been granted significant authority to colonize and subdue the province. Responsibility for conversion of the Indians was assigned to the Franciscan friars. New Mexico was divided into seven mission districts, one of which—"Jemez and all Apaches in its sierra and neighborhood"—encroached upon the eastern border of Navajo lands.[10] The mission established at Jemez was unsuccessful. The Navajos were elusive; their presence in the area was evidenced only by their plundering raids. In response to Navajo incursions, Onate dispatched a contingent of soldiers in a futile attempt to defeat "the Apaches who were killing people and stealing horses." [11]

In 1607, Onate resigned his office and returned to Mexico. The Navajos continued their raids, burning Spanish settlements, stealing livestock, and liberating Pueblo slaves. Spanish patrols were consistently unsuccessful in pacifying them. The province remained in a state of turmoil and the appointment of Governor Pedro de Peralta in 1609 did not improve conditions. Internal conflicts exacerbated the situation, most prominently evidenced by a bitter rivalry between the Franciscans and influential colonists for the control of Indian labor. Indian labor was exploited by securing *encomiendas*, a harsh form of peonage whereby the holder was awarded the right to employ Indians at designated wages. Provisions for compensation were typically ignored

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[9] An example of Spanish cruelty toward New Mexican Indian tribes occurred in 1599. Onate demanded that each pueblo provide its Spanish overlords with tribute in the form of food and clothing. The Keres, neighbors of the Navajos, considered the demands excessive and revolted. Onate dispatched soldiers to punish the Keres "as a warning to everyone in this kingdom." In command of this assignment was Vicente de Zaldivar, a nephew of Onate. Eight hundred Indian men, women and children were killed. When the Keres begged for mercy, prisoners were brought out and slaughtered. Five hundred women and children and 80 men were brought to San Juan as captives. There, Onate ordered that males over 25 years of age were to have a foot cut off and enslaved for 20 years; women and younger men were sentenced to slavery; girls under 12 years were given to Fray Alonso Martinez for distribution to Spanish families "in this kingdom or elsewhere." See George P. Hammond and Agapito Rey, eds. and trs. *Don Juan de Onate, Colonizer of New Mexico*.

[10] At this time, the Spanish included the Navajos in the term "Apaches."

The friar in charge of this jurisdiction was Fray Alonso de Lugo. See Hammond and Rey.

[11] See Hammond and Rey.

and Indian lands were arbitrarily confiscated with the indenture of their owners.

Navajo-Spanish relations during the 17th century assumed a recurrent pattern: skirmishes, Navajo raids, Spanish reprisals and punitive campaigns. However, contrary to Spanish documents of the period, the Navajos were not a warlike people. They engaged the Spanish as raiders, not as fighters. Unlike the military cultures of the Utes and Comanches, the Navajos participated in war only in reprisal. The Spanish were never successful in subduing the tribe; attempts at conversion to Catholicism resulted in failure.[12]

It was not until 1642 that the Spanish were moderately successful in temporarily terminating Navajo raids. The delay was caused in part by the acute conflict between the Franciscans and the secular authorities, each faction wishing to exercise the prerogatives of the other. Violence erupted when the Franciscans established factories supplied with forced Indian labor and assumed control of Indian slave distribution—both privileges of the civil governor. Governor Luis de Rosas incarcerated a priest and armed conflict ensued. In 1641, the Franciscans gained control of the provincial government and retaliated against the Navajos who had participated in numerous raids during this period of dissension. The Franciscan offensive produced temporary success; numerous prisoners were captured and enslaved; crops were burned; villages were destroyed. However, during the 1650's, the Navajos continued to keep the Jemez frontier in a state of turmoil, raiding livestock and threatening settlers.[13]

In 1680, New Mexico erupted in Indian rebellion. For years, the policies of the Spanish had engendered hatred and frustration in the Indians. Through a continuing series of regimes, Spanish governors had enslaved and mistreated Pueblos and Navajos. Crops had failed in many areas and the province was devastated by starvation and disease. Converted Indians were hanged and flogged for reverting to Indian religious ceremonies. Under the leadership of Pope, a medicine man from San Juan, Navajos and Pueblos united and revolted. Four hundred settlers and twenty-one priests were summarily killed. Unable to sustain

[12] Despite this dismal record, Spanish clerics continued to claim outlandish numbers of Indian converts. See the *Memorial* by Fray Alonso Benavides, a comprehensive report to the King of Spain, replete with exaggeration and overstatement.

[13] Frank D. Reeve, "Seventeenth-Century Navaho-Spanish Relations," 32 *New Mexico Historical Review* 51 (January 1957).

the onslaught, the Spanish retreated to El Paso and abandoned New Mexico to the Indians.[14]

The hiatus in Spanish rule was essential for Navajo acculturation. The contact with Pueblos during this period was most pronounced: Navajos adopted weaving; Pueblo religious customs influenced primitive Navajo theology; intermarriage was common.[15]

The eighteenth century produced a monotonous record of Navajo plunderings, Spanish reprisals, fragile peace accords, and Navajo plunderings. Although New Mexico had been reconquered by Diego de Vargas in 1692, the Navajos remained unsubjugated and continued their depredations. In response to Navajo incursions, expeditions were dispatched whose aim was not only to punish but also to supply the lucrative slave market established at Taos.[16]

During this period efforts at conversion to Catholicism were continued. All were futile except for the ephemeral success attained in 1744. The Navajos agreed to swear fealty to the Catholic Church if the Spanish promised to protect the tribe from devastating Ute attacks. Two friars spent six days among the Navajos, reporting the conversion of 5000 Indians. By 1749, two missions populated by Navajo converts had been established. One year later, the friars were expelled, the Navajos abrogating their pledge. Subsequent investigation revealed that no efforts had been made to stop Ute raids and that the friars had liberally promised gifts which had not been delivered.[17]

Commencing in 1769, Spain issued a series of land grants to settlers who requested permission to move west of the Rio Grande River. Although each grant contained provisions recognizing Navajo rights, Indian ownership was flagrantly disregarded. Attempts at Navajo divestment produced tensions which erupted in fighting in 1774. By 1780, the Spaniards were expelled from this area and the Navajos reclaimed their lands.[18]

The early nineteenth century witnessed a continuation of the Navajo-Spanish relations of the preceding century: raids, reprisals, precarious

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[14] Terrell, pp. 43-8. The Indians attempted to destroy every vestige of the Spanish presence. Missions, farms and factories were burned. Every person who had been forcibly baptized was thoroughly washed with yucca suds.

[15] See Evon Z. Vogt, "Navaho" in *Perspectives in American Indian Culture Change*, ed. Edward H. Spicer p. 301.

[16] See A. F. and Fanny Bandeber, *Historical Documents Relating to New Mexico*.

[17] Frank D. Reeve, "The Navaho—Spanish Peace, 1720's—1770's," 34 *New Mexico Historical Review* 25-40 (January, 1959).

[18] Lawrence C. Kelly, *The Navajo Indians and Federal Indian Policy* p. 4. See also, Frank D. Reeve, "Navaho-Spanish Diplomacy, 1770-1790," 35 *New Mexico Historical Review*, 200-235 (July, 1960).

treaties. As Spain's control over her American colonies weakened, Navajo plunderings increased in boldness and magnitude, and Spanish troops continuously invaded Navajo territory. With the decline of Spanish authority, the Navajos emerged as the "most impressive pastoral culture in aboriginal America and one of the dominant military powers in the Southwest."[19]

In 1819, the Navajos concluded their last peace treaty with Spain. It was broken several months later when forty Navajos entering Jemez to trade were murdered by Spanish citizens led by the local mayor. The killers were arrested but later released when Mexico gained its independence from Spain.

In 1821, Mexico won independence from Spain and asserted control over the province of New Mexico. However, the change in power brought no alteration in policies toward the Navajos. The Mexicans eagerly continued Indian chattel slavery and established active slave-trading centers at Abiquiu, Cebolleta, Jemez and Cubero. Captured Navajos were sold to labor on New Mexican ranches and in mines, or were exported to Mexico. Baptized by Mexican priests, Navajo children were purchased for 150 pesos. The Mexican authorities actively supplied human produce for these markets. After negotiating a treaty with the Navajos in 1823, Governor Jose Antonio Vizcarra launched slave raids into Navajo territory. Later governors employed Utes, Pueblos and civilians to conduct slave raids, and slaving offensives were often directed by civilians without government sanction.[20]

Between 1822 and 1846, the Navajos retaliated against the Mexicans in hope of liberating enslaved Navajos and in reprisal for invasions of tribe lands. Treaties were repeatedly entered only to be abrogated when Mexican slave hunters attacked Navajo settlements.

Despite Mexican expeditions against them, the Navajos continued to develop a prosperous economy and a sophisticated culture. The first description of Navajos to appear in an American publication stated that the Navajos'

> skill in manufacturing and their excellence in some useful and ornamental arts show a decided superiority of genius over all other tribes of the Western continent. They have fine flocks of sheep, abundance of mules and herds of cattle of a superior kind. They have gardens and peach orchards. Several articles of their woolen manufacture equal the quality of ours.[21]

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[19] Vogt, p. 293.

[20] Terrell, pp. 72-74. See also, L. R. Bailey, *Indian Slave Trade in the Southwest* (1966).

[21] Samuel Patton writing in the Missouri Intelligenser, Terrell, p. 76.

The American Period

"Great nations like great men, should keep their promises." [22]

In August, 1846, Brigadier General Stephen Watts Kearney, commanding the Army of the West, invaded New Mexico as part of the campaigns of the Mexican War. The province offered no resistance and was quickly placed under American military control. Ignoring regulation of the Navajo slave trade, Kearney assured the New Mexicans that American forces would halt Navajo raids.

The first American military campaign against the Navajos commenced in October 1846. The expedition was concluded by a treaty signed at Bear Springs. In addition to provisions assuring peace and regulating trade, the document proclaimed that Indians would be considered Americans, that Indian slaves would be liberated, and that property illegally obtained would be returned. The Bear Springs treaty was never effective. Congress never ratified the compact; the New Mexicans continued to hunt Navajos for the slave markets; the Navajos retaliated with plundering raids.

The next fifteen years provided a heritage of numerous military operations; of a succession of Navajo raids and "incidents;" and of abortive attempts at any lasting peace. Stability was complicated by the inability of the Americans to control this vast area and by their inability to understand the political structure of the Navajo Tribe. The Navajos had no elaborate political strata; there was no supreme chief who exercised plenary power. There existed local "headman," but these figures exercised jurisdiction over only those within their immediate control. In treaty ceremonies, the Americans regarded the headmen as tribal chiefs and assigned responsibility to the entire tribe when provisions were violated by Navajos not subject to the document. Consequently, Navajos residing near American settlements were severely punished for the depredations of Navajos living far to the West. The situation was exacerbated by New Mexicans who, invoking American territorial regulations for recapture of stolen livestock, invaded Navajo settlements on slave raids. Further aggravation of conditions occurred with the influx of unscrupulous white traders following the American occupation. In the absence of any regulations governing their activities, they traded knives and raw whisky for Navajo pelts and crafts at unconscionable profits. In addition, they supplied guns and ammunition which were later employed in skirmishes with New Mexicans and American soldiers.

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[22] *Ex parte Webb*, 225 U.S. 663 (1912)

In 1852, the federal government established Fort Defiance in Navajo territory.[23] The installation was located in a strategic position: American troops could patrol the area; New Mexican slave hunts could be abated. The presence of the fort instigated a short period of peace and trade relations were established with the Navajos. As much responsible as the Army presence for this period of tranquility was the astute Indian Agent, Henry Linn Dodge. Upon appointment, Dodge immediately embarked upon an ambitious program to help the Navajos. Without a military escort, he travelled widely throughout his vast jurisdiction, studying Navajo problems and hearing their complaints. He attained a rapport with the tribe that was unmatched by any preceding official.[24] In 1855, he made the unprecedented request that the Indian Bureau appropriate funds for farm implements for Navajos. Later, he employed a blacksmith and silversmith for instruction in these crafts, requested the establishment of a school, and even expended personal funds for needed equipment.

During this period, New Mexican stockmen continued to encroach upon Navajo lands. Although the tribe claimed an enormous territory, the majority was arid and unsuitable for grazing. In order to avoid further confrontations between Navajos and New Mexicans who operated under color of law, and to avert dangerous over-grazing, the territory government proposed the establishment of a permanent Navajo reservation. In 1854, Congress enacted the Indian Appropriations Act which authorized the territorial governor to enter into a treaty with the Navajos. The treaty announced the boundary lines of the proposed Navajo country. The tribe forfeited significant territory including important holy shrines and ancestral lands. In return, it was to receive supplies, farming implement instructors, and annuities for the land ceded. In addition, New Mexican stockmen would be prevented from trespassing on these lands and the army would afford protection from hostile Indians. On the endorsement of Dodge, the Navajos assented to these provisions. However, the treaty was never honored by the United States: New Mexican stockmen continued their incursions; the promised funds and supplies never appeared; no effort was made to protect the Navajos from aggression. Although Congress never ratified the treaty, the Navajos were castigated each time they retali-

[23] The site selected was called *Tsehotsohit*, "Meadows-Between-Rocks." It was a holy place revered by Navajos who visited its shrines.

[24] This was in part due to Dodge's marriage to a Navajo woman who was related to the influential Navajo, Zarcillas Largo. The Navajos christened him "Red Shirt." See R. F. Van Valkenburgh, "Captain Red Shirt," *New Mexico* magazine (July 1941).

ated for New Mexican slave raids or trespassing livestock. Moreover, the American commanders scrupulously adhered to the boundaries established by the treaty.

In 1856, the competent and popular Dodge was killed by an Apache. Two years later, the uneasy peace won through his efforts dissolved. The military commander at Fort Defiance had seized a large tract of traditional Navajo pasture. When Navajo horses encroaching on this preserve were shot, the Navajos retaliated by killing the commander's personal Negro slave. A punitive expedition escalated into hostilities which climaxed in an attack on the fort in 1860.[25] The area then returned to its pattern of attacks and reprisals. The situation was further complicated by a Mormon campaign "to bring about a peaceful settlement between the Utes and Navajos in an attempt to turn the two tribes against the United States government."[26]

The outbreak of the Civil War prompted the withdrawal of forces stationed at Fort Defiance. The Navajos took advantage of the Army's preoccupation with the war and multiplied their raids on white settlements. In 1863, Brigadier General James H. Carleton arrived from California to engage any Confederate forces in the area. Since the Southern army had fled before the union arrival, Carleton directed his attention to the Navajos. After conferring with the territorial governor, Carleton launched a campaign which, while partly a punitive expedition, would result in the establishment of a lasting peace through the wholesale removal of Apaches and Navajos to a reservation in eastern New Mexico. Carleton's vision was

> . . . to gather them together, little by little, on to a reservation, away from the haunts, and hills, and hiding places of their country, and then to be kind to them, there teach their children how to read and write; teach them the truths of Christianity. Soon they will acquire new habits, new ideas, new modes of life; the old Indians will die off, and carry with them all latent longings for murdering and robbing; the young ones will take their places without these longings; and thus, little by little, Navajo wars will be remembered only as something that belongs entirely to the past.[27]

The site Carleton selected for the reservation was Bosque Redondo, located 180 miles southeast of Santa Fe; a new military installation,

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[25] Edward H. Spicer, *Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960*, p. 217.

[26] Report of Secretary of War, 35th Congress, 2nd Session, 1858.

[27] James H. Carleton to General Lorenzo Thomas, September 6, 1862, in U.S. Congress, Senate, Joint Special Committee, Conditions of the Indian Tribes, 39th Cong., 2d sess., 1866-1867, Report No. 156, p. 134. There is some support for the position that Carleton's decision to remove the Navajos was motivated by a belief that Dinetah was rich in mineral wealth. See Terrell, pp. 161-62.

Fort Sumner, would guard access to the area. This region was grossly unsuited for habitation. The dry, parched land was barren except for occasional cottonwood trees. The soil was unfit for cultivation because of a dominant presence of alkali. The water supply furnished from the Pecos River was foul and generated disease.

Responsibility for bringing the Navajos together for transport to Bosque Redondo was delegated to Colonel Christopher "Kit" Carson. The Navajos were given until July 20, 1863 to surrender. When only a few Indians responded to this order, Carson invaded Navajo country. The land was methodically pillaged; livestock were slaughtered; unarmed Navajos who resisted were shot. Suffering from exposure, many Navajos surrendered. Others attempted to negotiate with Carson, offering guarantees of lasting peace by constructing their hogans within site of Fort Defiance.[28] Carson refused to hear their pleas and continued his implacable destruction of Navajo food supplies, reducing the tribe to starvation. By autumn, Carson's scorched-earth policy had succeeded in destroying most of the tribal livestock and grain. Carleton accelerated the program by ordering that each Navajo male was to be shot or taken prisoner on sight.

In early 1864, starvation and freezing impelled substantial groups to surrender. Although emaciated and almost naked, the Navajos were issued meager rations and occasional garments. Ill-treated, many died.

In March, the "Long Walk" to Fort Sumner and Bosque Redondo commenced. 8,500 Navajos eventually made the exhaustive 300 mile journey on foot. The hardships they suffered were eclipsed only by those experienced at Bosque Redondo itself. Many died enroute,[29] and children were kidnapped by Mexican slave hunters.

The utopia that Carleton had envisioned at Bosque Redondo never appeared.[30] The makeshift shelters were in a state of severe delapidation, and for protection the Navajos were compelled to dig holes and cover them with woven grass mats. After the meager wood supply was ex-

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[28] Carleton refused to accept any compromises. He instructed Carson: "Say to them—'Go to the Bosque Redondo, or we will pursue and destroy you. We will not make peace with you on any other terms. . . . This war shall be pursued against you if it takes years, now that we have begun, until you cease to exist or move. There can be no other talk on the subject.'" See Dee Brown, *Bury My Heart at Wounded Knee*, p. 25.

[29] Of 2400 in one group, 197 died before arriving at their destination. In another group of 946, 110 died.

[30] Despite the prevalent conditions, Carleton glowingly described the Bosque to his superiors as "a fine reservation. . . . There is no reason why they (the Navajos) will not be the most happy and prosperous and well-provided-for Indians in the United States." Brown, p. 30.

hausted, only mesquite roots remained for fuel. The agricultural paradise described by Carleton never occurred. The soil was unsuitable for farming and the Tribe was furnished with few farming implements. Drought, hail, insects and floods attacked planted crops in a perpetual cycle of destruction. More formidable was the psychological impact on the Tribe. Accustomed to activity over vast open spaces, they were homesick and miserable in group confinement.

There was also the constant presence of disease and death. A major cause was the "black and brackish" water supplied to the reservation. Another contributor was the rations issued upon crop failures. In autumn, 1865, the Navajos were furnished meal, flour and bacon which had been condemned as unfit for American soldiers. For those Indians attempting to escape from these miseries, Carleton ordered the post commander to shoot every Navajo apprehended off the reservation without a pass.

In 1868, the Bosque Redondo experiment was officially discarded. A treaty was signed which permitted the Navajos to return to a new reservation established in their homeland. Four million acres were segregated for their exclusive use.[31] One school for every 30 children was to be provided for those Navajo children who could be "induced or compelled to attend." Food, supplies, and equipment were to be furnished. In return, the Navajos agreed to abandon raiding and plundering.

Although the reservation was established in Navajo country, the federal government failed to abide by many of its 1868 treaty obligations. Only one inadequate school was constructed. Commitments of food provisions, supplies, and agricultural implements were wantonly ignored. Appropriations for the Navajo Agency were insufficient to satisfy minimum requirements.

Through countless tenures of Indian agents during the last part of the nineteenth century, the Navajos made some economic progress. Population increased rapidly, livestock multiplied, and land under cultivation expanded. However, the area remained an abyss of poverty and the persistent theme became a struggle with whites for land.

Compounding the economic despair of the region were the attempts by government officials to compel American acculturation. Illustrative of this were the numerous religious mission groups who were granted

[31] This area was much smaller than the territory the Navajos had previously occupied for generations. Available water resources were insufficient to maintain the population.

educational jurisdiction on the reservation.[32] The programs inaugurated by these groups produced pronounced cultural disorientation and severe emotional trauma.[33] Education consisted of efforts to erase native customs, and attempts to assimilate American values and Christian principles. Even after federal subsidies ceased for sectarian schools in 1917, the mission schools continued to operate.

By 1878, the reservation established in 1868 was over-populated and overgrazed. Although the tract encompassed a vast area, much of it was unsuitable for agriculture or grazing. There followed a series of land acquisitions by various administrations until today the reservation comprises over 15 million acres. However, many of these additions were worthless for farming or grazing. Moreover, when Navajo livestock entered the public domain to graze, heated conflicts ensued with white ranchers. Hostility with white stockmen continued as long as the reservation remained inadequate for Navajo economic support. Indeed, the record during this period is punctuated by the unrelenting efforts of commercial interests to seize Indian lands.

The Depression years of the 1930's ushered in a period of severe poverty for the Navajos. Reservation ranges were overstocked and overgrazed. Hundreds of families were destitute and completely dependent upon relief from federal agencies. With the passage of the Indian Reorganization Act in 1934[34] and other legislation, the government initiated a massive program of public works and conservation and a plan for development of Indian self-government. Particularly controversial was the livestock reduction program inaugurated to prevent continued erosion of overgrazed land. The Navajos, who measured their wealth in sheep, adamantly opposed this policy, and economic explanations could not dispel their view that reduction generated senseless waste.[35] The rancor that this program produced would infect future Navajo-federal relations.

During World War II, Navajos served the war effort with distinction. 3,600 saw active duty while more than 4,000 performed war-related duties on and off the reservation.[36] However, the post-war years

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[32] Mission schools were operated by the following religious orders: Presbyterian, Methodist, Catholic, Christian Reformed Church, Mormon, Mennonite, Seventh-Day Adventist, Navajo Gospel Crusade, Church of the Brethren, Quakers, Plymouth Brethren Church, Global Gospel Fellowship, Inc., and Navajo Bible Academy.

[33] Terrell, pp. 223-234.

[34] Cong. Record, 73 Cong., 2 Sess. (June 18, 1934).

[35] Tom Sasaki, *Fruitland, New Mexico, A Navaho Community in Transition*, pp. 34-36.

[36] Jane M. Christian, *The Navajo, A People in Transition*, Part I, p. 23.

witnessed a return to economic privation. The wartime jobs created for the reservation disappeared and annual family income fell to $400 from an unprecedented $1,200.[37]

Despite the elaborate Navajo-Hopi Long Range Rehabilitation Act[38] and other legislation, the Navajos continue to live in severe poverty. Financial assistance has been furnished, but the complex cycle of poverty and despair has persisted. As one observer has noted: "The Indians received help, but never learned to help themselves. It was like giving morphine to a patient dying of cancer; it killed the pain but not the disease."[39]

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[37] Id. at 24.

[38] Cong. Record, 81 Cong., 2 Sess. 2085, 2688-2689 (February and April, 1950). It was enacted on April 19, 1950.

[39] *The Register*, (Santa Ana, California), May 5, 1968 at A-15, Col. 4.

TRIBAL HIERARCHY

Before their exile to Bosque Redondo and subsequent return to reservation lands in 1868, the Navajos were loosely organized in various bands, each headed by its own leader. "In a political sense a Navajo tribe did not exist at the time of the American occupation of the Southwest. The people shared a common language and culture, but their political organization did not extend beyond bands, or families, led by headmen called naat'aanii."[1]

Between 1901 and 1908, the Navajo reservation was divided into five districts for administrative purposes.[2] No substantial developments occurred in Navajo tribal government, however, until 1921 when oil was discovered near Shiprock, New Mexico. To facilitate negotiation of oil leases, the federal government provided for the election of an all-tribal council.[3]

During the 1920's, Agent John Hunter established a formal organization called a "Chapter" in the Leupp Superintendency. This institution soon spread to other areas, inaugurating the commencement of local Navajo government.[4]

The impetus for local chapter houses emanated from the fact that "larger community problems in the increasingly formalized political situation cannot be successfully handled by the old Navajo type of kin-based units. The Chapter is a territorial organization, geared to the problems of the local group. Since traditional Navajo Society offers no model, Navajos have institutionalized the Government-devised form in which they had acted under Bureau tutelage."[5]

There are at present 78 Navajo Chapter Houses. Each has a secretary and other local officers. Each elects a Chapter delegate to represent local members at the tribal council. The tribal Chairman and Vice-Chairman are elected by secret ballot on a tribe-wide basis.[6]

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[1] Terrell, p. 279.

[2] Underhill, p. 220.

[3] Berard Haile, O.F.M., *Property Concepts of the Navajo Indians*, Anthropological Series No. 17., p. 2.

[4] Mary Shepardson, *Navajo Ways in Government*, American Anthropological Association, Vol. 65, No. 3, Part 2, June 1963, Memoir 96, p. 15.

[5] *Ibid*, p. 84.

[6] James F. Downs, *The Navajo*, p. 125.

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